

Environmental Decision - Making In Minnesota:
An Overview, Applicability of Innovations in Other
States to Minnesota and Alternatives

April, 1973

Contract Number E 9771
Minnesota State Planning Agency

to

University of Minnesota
Minneapolis, Minnesota

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INTRODUCTION

The following report contains background material, findings and recommendations relative to environmental decision-making in Minnesota. The report was developed under contract from the Minnesota State Planning Agency to the University of Minnesota, Center for Studies of the Physical Environment. It should be emphasized that the report does not reflect an official posture of the Minnesota State Planning Agency.

The research effort for this report was structured along the following guidelines:

Assist the State Planning Agency in developing a report outlining the environmental decision-making requirements and potentials in Minnesota by:

- A. Surveying the environmental decision-making systems in Minnesota by and in other selected jurisdictions.
- B. Appraising the effectiveness of systems surveyed above by reviewing past performance and identifying both strengths and weaknesses of each.
- C. Identifying those systems that address issues similar to those existing and potential in Minnesota.
- D. Develop basic assumptions and criteria that an environmental decision-making system in Minnesota must meet.

Assist the State Planning Agency in developing alternative environmental decision-making systems that have potential to meet Minnesota's requirements.

Chapters I-V provide an overview of environmental decision-making in five issue areas in Minnesota. The five issue areas are water quality

management and water resource management, shoreland management and development, air quality, solid waste management, and land use planning. A summary and evaluation for each issue area is presented in the respective chapters.

Chapters VI-X describe the activities five other states have undertaken to resolve environmental decision-making conflict issues as well as to plan in a systematic way policy questions concerning environmental resource management and regulation. The five states considered were Maine, Vermont, New York, Washington, and Oregon. Each chapter has a section summarizing the state's activities, an evaluation of those activities, and recommendations for consideration by Minnesota.

Chapter XI summarizes the current discussion for a Federal Department of Natural Resources. The implications for Minnesota of such a reorganization at the Federal level are considered. Chapter XII discusses and summarizes Minnesota House File 2405.

Chapters XIII and XIV develop general criteria which an environmental decision-making system should address as well as describe and discuss two alternative institutional frameworks which Minnesota policy decision-makers and citizens may wish to consider. The two alternatives are:

1. A single agency concept for environmental planning and decision-making, and
2. A mechanism for guaranteed citizen access to environmental decisions. It should be noted that both alternatives have precedence in the other states included in this research. The single agency concept is being utilized in New York and the citizen access mechanism is related to the Washington Pollution Control Hearings Board. Hopefully these alternatives will stimulate public discussion.

The reader should be cautioned that the substantive field work for this research was completed by December 1972 and some of the issue areas have already received attention by the Minnesota State Legislature, The Governor, Minnesota State Agencies, and public spirited citizens. This may outdate some of the material presented in this document. That situation however is not uncommon when engaging in public policy research.

The options and views which are inherent in this document are those of the investigators.

CHAPTER I

WATER QUALITY MANAGEMENT AND WATER RESOURCE PLANNING EVALUATION

PART I

INTRODUCTION

Minnesota is a water-rich state. Its water resources include hundreds of miles of rivers and streams and over 12,000 lakes, adequately positioned throughout the state for irrigation, recreation, navigation, domestic use, and effluent discharge. Since the boundaries of the natural watersheds were not co-ordinated with those of the local governmental units, a single lake or stream may be under the jurisdiction of many municipalities and counties. This has greatly hampered attempts to manage any of the water resources.

As questions of water use arose over the years, agencies were created to deal with specific areas. Reorganizations tended to shift specific duties to new agencies, rather than develop a mechanism that would handle all present and future problems associated with use and management of water resources.

Minnesota's water law was developed in a similar manner. It is now composed of a series of statutes dealing with specific areas. Decisions made in other areas are based upon interpretations of the introductions to these laws; differences in interpretations are common, and outright contradictions have been found. There is no comprehensive water law in Minnesota.

Only recently has there been an attempt to determine a state policy for water resources management; this will be a general statement of the

goals for water use and water quality, as related to the topic of total state growth. As such it should form the basis for planning processes, which will determine the methods congruent with the goals and construct the actual projects needed to accomplish the goals.

This chapter discusses the current processes of water resources management, particularly considering the duties of each of the governmental units involved.

SUMMARY AND EVALUATIONS

The procedure for water resources management in the State of Minnesota suffers from several very basic faults:

1. Fragmentation of administrative and enforcement duties among several commissions, agencies, and departments.
2. A cumbersome network of special purpose districts which overlap geographically and jurisdictionally.
3. Lack of an effective method of co-ordinating these various commissions, agencies, and departments.
4. Lack of a mechanism for conflict resolution.
5. Lack of overall water policy formulation.
6. Representation of vested interests in the agencies.
7. Inability to adequately enforce existing policy.
8. Dependence upon local initiative for the work needed to manage the water resources.

1. Fragmentation. There are at least fourteen state agencies responsible for aspects of water resources administration: the Departments of Natural Resources (DNR), Agriculture, Health, Economic Development, and Highways; Pollution Control Agency (PCA), State Soil

and Water Conservation Commission (S&WCC), Water Resources Research Center at the University, Water Resources Board (WRB), Metropolitan Council, League of Minnesota Municipalities, Association of Minnesota Counties, Water Resources Co-ordinating Committee (WRCC), etc. Each agency has been given different administrative duties, yet the lines between them are often very finely drawn. An example is in the maintenance of a watershed: the WRB approves the initial request for the watershed district; S&WCC is in charge of construction and DNR supervises it; also, DNR and PCA approve the plans for taking and returning water in the watershed. Water is multi-functional and may be considered for purposes of water supply, recreation, irrigation, or navigation by the Departments of Health, DNR, S&WCC, and federal agencies respectively, thus becoming part of the planning decisions and enforcement actions of each agency.

2. Many special purpose districts. This fragmentation has given rise to networks of special purpose districts designed to streamline the administrative duties for each agency; these networks are not coordinated with either the existing political boundaries or with each other. The 91 Soil and Water Conservation districts include all land in the state except Ramsey County -- the 1971 legislature included state, municipal, village, and Indian land, while the 31 watershed districts cover only portions of the state. Sanitary districts, used by the PCA to ease enforcement of sewage treatment standards, are organized by special enabling legislation; six have been so far established, covering a small area of the state. In addition, conservancy districts and lake management districts serve specific localized needs.

Realizing the awkwardness of this system, the 1969 legislature co-ordinated the S&WCC with the county governments, since the county has taxing powers and more property rights, such as the ability to channel land where desired. Further re-organization has not yet occurred, although recommendations have been made for the next legislative session.

3. Lack of an effective method of co-ordination. As stated above, the number of agencies involved and the number of special purpose districts have resulted in actions and policies that go in many independent directions. The WRCC, established in 1967, is the only formal connection among all the agencies; while it can be used for information exchange, large-scale use has not been made of this function. Agencies are dependent upon informal means -- notes, telephone calls, representatives at meetings, etc., resulting in a greater opportunity for inefficiency and duplication of efforts; the initiative of each agency thus determines the amount of contact actually made. The PCA and DNR particularly want a computerized system for data and project information, but the request for funds was turned down by the legislature in 1971.

An example of a more serious duplication, when two agencies are delegated the same functions, is that of the watershed authority of the WRB and the S&WCC. Both can help with watershed problems, the major differences being that the S&WCC does not establish separate watershed districts and depends upon the county for powers of taxation and eminent domain; the WRB has filled no function other than establishing these districts.

4. Lack of a mechanism for conflict resolution. Minnesota's water law is compiled from many different statutes. The Water Resources Board, originally intended to resolve conflicts over differing interpretations of the law, has used this power less than eight times. The reason appears to be more than inadequate funding. One consideration is that the decisions made by PCA, DNR or by the district court can be appealed, while the WRB's decision is usually considered final. Another reason is the dissatisfaction of the agencies with recent decisions made by the WRB, in which the actions of the local governments were weighed rather heavily.

When local conflicts arise, the normal appellate mechanisms of the PCA and the DNR are utilized. On interstate matters and on issues where DNR and PCA have no authority, there is neither procedure nor action. The WRCC helps to resolve problems arising from conflicting agency projects, but this is not available for citizen and non-agency complaints; it also has no powers for enforcement.

5. Lack of overall policy formulation. The Bureau of Planning in DNR is currently charged with establishing water use plans for Minnesota. This is federally funded by Public Law 89-80; since this expires in 1975, the push is to complete them quickly. The lack of a current water use policy for the entire state has allowed separate policies to be developed by agencies of widely differing orientations. This again increases the chances for interagency conflict and for duplication of efforts. Since a stream can signify recreation, navigation, as well as water supply, each agency involved can accordingly draft plans based on its own particular criteria. Most of the agencies have been concerned

with short-term planning. Only recently, through the funding of the federal government, has long term planning been a reality, and these plans have not yet been assimilated into the bureaucratic plans. To return to the watershed example, yet another agency plays a direct planning role, for the PCA is developing long-range plans for the ten large river basins in Minnesota.

Mention should be made here of the input from the legislature. The Minnesota legislature has traditionally kept close reins on administrative functionings, in many cases establishing the major policy statements. So, some agencies have tended to wait until legislative preferences are expressed before venturing into these areas.

6. Representation of vested interests. This applies primarily to the S&WCC, which consists of people associated with agriculture, who are recommended by the Association of Soil and Water Conservation Districts. In addition, the hierarchy of each agency tends to consist of people with backgrounds in agency-oriented fields -- health, agriculture, resources, etc.; narrowing the scope of the inputs to the decision-making process.

7. Inability to adequately enforce existing policy. The standards set up for water quality by the PCA appear to be adequate -- the problem lies in the lack of sufficient staff to enforce them. The municipal sewage treatment plants of the larger 35-40 towns are adequately supervised, but there are no people to monitor industrial wastes. If infractions occur, the time lag between notification and clean-up actions can be long, and the penalties -- a maximum of \$300/day for both PCA and DRN --- are quite low. The PCA does have broad injunctive powers, though.

DNR has similar powers in the administration of permits for water use.

The emphasis on enforcement of water quality and water use through a permit system can have troublesome implications. Since each permit application is considered individually, the process can be highly political in nature. Given staff and budget limitations, investigations prior to approval and during construction can be very hurried; DNR and PCA both rely on the co-operation of other agencies for such field work, bringing in the problems associated with voluntary help. Finally, it is hard to relate the specificity of permit applications to a general plan for water use.

8. Dependence upon local initiative. The effectiveness of a plan or policy is measured by the work -- properly oriented -- that is accomplished in its name. The work associated with the policies and plans must be initiated or approved by the local governmental units. The special purpose districts are founded entirely on the principle of "local action, state guidance", for local groups must petition to have projects undertaken. This keeps local involvement very high, but means that essential projects can be neglected.

It is important to note that the special purpose districts are effective because they cut across the red tape associated with co-ordinating several governmental units for a specific purpose. The Joint Powers Act of 1943 allows municipalities to jointly handle common problems, and a legislative task force is recommending that this method be used rather than special purpose districts. Reasons given for the use of the Joint Powers Act are that it prevents further fragmentation of administrative functions and structures, and it leaves control of the projects in the

hands of popularly elected officials. The disadvantages make it extremely cumbersome, for it is difficult to maintain consensus among the parties to the agreement, with the decisions often being too incremental in nature to provide for significant action; the process of bringing the local units into a common agreement requires a great deal of effort, particularly in something as controversial as resource management.

For the reasons discussed above, changes must be made in the Minnesota system for water resources management. Although the final decisions will be contingent upon the extent of reorganization desired, the following recommendations are made:

1. Establish a state water-use policy that all agencies can use for guidelines in their particular policy decisions.
2. Establish a data-sharing system, so that decisions can be based on the most complete of background information. This system should include the activities being undertaken by the agencies as well as storage of facts already accumulated in previous activities.
3. Establish a conflict resolution mechanism. This should be a relatively independent body, closely associated with the environmental policy board, perhaps quasi-judicial in nature. It might be part of a broader conflict resolution mechanism.
4. Re-organize the agencies involved in water resources policy, to eliminate duplications and reduce the number of agencies involved. The Citizen's League recommends that the WRB be abolished, and that its watershed responsibilities become part of DNR. The divisions in water policy administration would then be: regulatory -- PCA, planning and management -- DNR, policy decisions -- SPA.

It has also been suggested that the agencies be reorganized according to activity rather than function. This would group all water-related activities in one agency, with separate agencies responsible for formulations of general policy and enforcement of the standards set by the Water Agency. For both methods the goal would be something other than a mere shifting of personnel from one office to another.

5. Establish a board to determine continuing water resources policy; this should have input from all water-related agencies, yet it should not be governed by them.
6. Allow for input into the policy-making process from sources other than water-related agencies, particularly private citizens. This might be accomplished through membership in the policy-making board.
7. Co-ordinate the special purpose districts with the existing governmental levels, particularly the regional governments. Dependence upon voluntary co-operation between local units will not provide the scope, authority, or expertise required for resource management.
8. Authorize sufficient funds to ensure monitoring and enforcement for water quality.

PART II

STATE PLANNING AGENCY

The State Planning Agency is an executive agency established by statute in 1965. Normal operations are funded by legislative appropriations, but the funds for long term water resources planning have come from Public Law 89-90, (Water Resources Planning ACT); these will expire in 1975.

Rules, Regulations and Policies

As a planning agency, the SPA can establish and co-ordinate state policy decisions. It receives its guidelines from the legislature; if none are forthcoming from the 1973 session as to how the state should solve the problems related to water resources, the SPA will formulate such plans itself.

Function

The State Planning Agency has been responsible for both long-range water resources planning and for certain short-range plans. Its recommendations have been published under the auspices of the Water Resources Co-ordinating Committee; recent publications have catalogued Minnesota's water resources and water problems, attempting to assess the state's needs for the future.

A recent re-organization delegated the long range and short range planning functions to the Department of Natural Resources. The SPA sent its water resources planning staff and the federal monies received from Public Law 89-90 to DNR, giving it needed expertise. Since the SPA retains the responsibility of relating water resource planning to the comprehensive plan for state growth, it might be responsible in the

future for determining priorities for water use.

Co-ordination of planning activities from the different agencies will be a major SPA function. To expedite this, the SPA under federal circular A-95 was authorized to act as a clearinghouse for all projects involving federal assistance; as such it receives copies of requests for federally funded projects and reviews that Environmental Impact statement that accompanies each request.

It is strictly an advisory agency, with no powers other than recommendation.

Clientele

It serves the governor as a ready source of planning expertise.

Review Mechanisms

The governor reviews the SPA decisions.

DEPARTMENT OF NATURAL RESOURCES, Division of Water, Soils, and Minerals

The DNR is an administrative agency, created by the legislature in Minnesota Statutes Chapters 84-105. Although the federal government is funding the long-range planning for water resources, the remainder of the Division's budget comes from legislative appropriations. It is concerned primarily with resource management. The DNR appears for the State on matters concerning the public waters.

Function

DNR has five primary responsibilities concerning water resources. The Division of Water, Soils and Minerals is in charge of four of these:

1. Administration of the water permit system. There are four types of water permits:
 - a. Water appropriation permit. Chapter 105.41. This is required of anyone using water, with the exception of domestic use for less than 25 people and use by certain municipalities operating under conditions approved at an earlier date. (See appendix for forms).
 - b. Permit to change the course, current or cross-section of public waters. Chapter 105.42. Since the term "public waters" was rather obliquely defined as "capable of beneficial public use", the actual jurisdiction of DNR is continually being tested in the courts. The permit is needed for activity on the shore as well as activity in or on the waters. (See appendix for forms).
 - c. Crossing of utilities through public waters. This is a permit and lease system, based on the assumption that the state owns the bed of the water -- an assumption that is being questioned.
 - d. Underground gas storage. An aquifer of certain specifications may be used for underground gas storage; this permit has been issued only once, but more use in the future is anticipated as demands for power increase.

Forms are submitted to DNR and concurrently to the affected local governmental unit and any watershed district for comment. The DNR has discretionary powers to call a hearing on a permit application, and usually does so if controversy is anticipated. If no hearing is held, the decision is made approximately 24 days

later. Most permits are approved with conditions that vary with each case, for each application is judged on its own merits; economic implications are considered, but physical factors are stressed. The Division can evaluate alternate sites for projects. About 2000 permits are granted yearly, the great majority of them going to private citizens.

2. Provision of expertise for water-related projects. The Division supplies technical assistance for the planning activities of the watershed districts and the soil and water conservation districts, co-ordinates the various federal agencies involved with watersheds (United States Geological Survey, USDA Soil Conservation Service, Agency of Housing and Urban Development, US Army Corps of Engineers), and also works with municipalities and counties on shoreland management questions. With its large number of wildlife and resource management specialists, the DNR has become a valuable source of expertise for other agencies.
3. Classification of the lakes and streams. To aid planning relative to shoreline zoning, four classifications have been designated: Natural Environment Lakes and Streams, Recreational Development Lakes, General Development Lakes and Streams, and Critical Lakes. The goal is to provide for the application of different development standards to different types of lakes in order to achieve a balance between resource protection and resource utilization. Criteria such as crowding potential, amount of existing development, and county and regional public water needs were included with the study of the natural

environment. The county must now adopt zoning that will preserve the conditions needed for each class of lake. The study leading to the classification was partially funded with federal money.

4. Planning for short-range water-resources questions. This would involve devising technical solutions to problems defined by a long-range plan. The emphasis here is more on feasibility than on long term effects.

The Bureau of Planning was recently given the SPA's staff and the federal monies from Public Law 89-90 to begin the comprehensive long-range plan requested in DNR's enabling legislation. In addition to enumerating the goals themselves, this will evaluate the techniques used to accomplish the goals. The reorganization therefore reduced the number of agencies concerned with major decisions; SPA can now concern itself with policy questions.

The Division of Water, Soils and Minerals exercises enforcement powers to see that the conditions of the permits are met. DNR may suspend one permit, and, if the project is still continued, the matter is taken to district court. A civil suit may be filed, with conviction being a misdemeanor carrying a maximum of \$300/day fine; alternatively, an injunction order may be requested. The 145 soil conservation service officers serve as an informal field staff, checking each site before, during and after project activity. The power to approve all use of water is perhaps the most significant enforcement tool, for in this way the Division can assert an influence upon the nature, locale and extent of water-dependent activities.

Rules, Regulations, and Policies

Each application for a permit is considered individually, although the established zoning and pollution control standards must be met: a legislative task force is recommending that criteria be established for project approval. The legislature is expected to give guidelines in the 1973 legislative session for the long-range plan; if none are received, the Division of Planning will proceed to set its own guidelines.

Intergovernmental Relations

The DNR is a member of the Water Resources Co-ordinating Committee, but the more informal relations it maintains with the Department of Health and the PCA in particular are considered more productive. Through the use of its research and expertise capabilities it is in contact with the special purpose districts, municipalities and counties, and other state agencies, again on an informal basis.

To obtain enough facts to effectively plan, DNR desires more formal contact with other agencies about the scope of their particular projects, and a state-wide data-sharing system that will efficiently retrieve background information.

Clientele

Since conservationists, sportsmen and those seeking to harvest Minnesota's mineral and vegetable resources have been the clientele, DNR has been concerned with producing resources. Only recently has it begun to consider the secondary effects of its policies. The power to approve the use of water has tremendous implications for general growth, the demand for social amenities, etc.; the zoning of shoreland, based on DNR's classification of the lakes and streams, will in a similar

manner determine future growth in Minnesota. Another factor is the influence of the experts in DNR, who bring their own orientations to bear in the plans they devise to implement the policies.

In its capacity as a long-range planning mechanism, DNR must consider priorities for water-use, again having substantial effects on both the environment and on Minnesota's citizens.

Review Mechanisms

There are two methods for requesting review of permit decisions. First, any affected party may file suit in district court. Second, if a hearing was not held previously, one can be requested within thirty days of the decision. Following the hearing, an executive order on the decision is issued within sixty days; this order may be appealed through the district court, although this has not been done yet.

Since most activities that affect waters in the state will require a permit, requesting a review of the permit in effect reviews the activities. The problem lies in being able to protest in time -- the procedure can be very quiet, with many effects not apparent until the project is well underway -- and in being sophisticated enough to protest in a proper manner -- with data to substantiate the questions being raised. And very often these questions are related to social and economic issues rather than to the physical matters that are stressed.

Other than legislative review and directions from the governor, there is no formal review mechanism for decisions made by the Division. If DNR does in fact become the primary source for water resources planning, some formal review mechanism must be established so that non-resource management orientations are expressed in the long-range plans.

POLLUTION CONTROL AGENCY, Water Quality Division

The PCA is an executive regulatory agency established in 1967 by Minnesota Statutes, Chapters 115-116, for the prevention and abatement of pollution. The Water Quality Division consists of approximately 80 staff members, one-third of them engineers. Its budget is over 60% of the total PCA budget, with \$1,050,000 coming from state funds and \$241,000 from federal funds in the 1973 fiscal year. Increases in state funding are much higher than federal funding, \$200,000 as opposed to \$10,000 this year.

Rules, Regulations, and Policies

The PCA is empowered by law to establish standards for water quality in the state, to issue rules and regulations concerning the maintenance of such standards; these standards and regulations, already adopted, were the result of consultation with DNR and the Department of Health, and studies conducted by the PCA itself.

Policy on matters not covered by the statutes and existing regulations is decided by the water quality division, subject to approval by the nine member PCA Agency board. (This citizen board takes a very active part in both determining policy and directing proposed activities).

Function

To prevent and abate pollution, the Water Quality Division has been given several functions:

1. Classification of the state's waters. The rivers of Minnesota have been classified into five types according to the use of the water: as drinking water, or for purposes of recreation, navigation, industrial use, etc.; standards were set so that

the conditions necessary for each type could be maintained.

(See appendix for standards).

2. Establishment of standards for effluent discharge into the state's waters. These standards are based on the principle that if all discharges into a stream meet strict standards, the water quality of that stream will not be impaired. To insure this, the standards are based on the "seven day low flow"; this means that conditions are satisfied even during the critical time of low river levels. (See appendix for standards).
3. Administration of the permit system. All discharges into the State's waters must meet the established standards and be duly certified by the PCA. If the application for a permit is not acted upon within 90 days, it is deemed to be granted unless the PCA orders this time period extended. Hearings are generally held. Variances to the standards, such as time extensions in abatement proceedings and special conditions that affect water quality, may be granted; the agency board must approve each variance, and did so to only one of the 10-15 requests last year. Permit variances approved in the past are continually being reviewed, for they are constantly subject to revocation.

The permit system has been used primarily to monitor the effluents of municipal sewage facilities and the larger industries; disposal plants can be required to submit periodic reports on the state of the effluents they discharge.

4. Monitoring of industrial and municipal wastes. In addition to the requirements of the permit system, surveillance systems for

the sewage treatment facilities of the 35-40 larger towns have been developed.

5. Overseeing of construction of sewage treatment plants.
6. Administration of federal and state grant funds for municipal works. Varying combinations of these funds are used to acquire and better public land and buildings and to finance the construction of water pollution prevention and abatement facilities. The state appropriated \$34,750,000 for the 1972-1973 fiscal years for projects receiving the required federal assistance; not less than 20% of the project is to be paid by the agency or municipality constructing the project. Criteria established to determine the priority of the projects include the nature and extent of pollution, feasibility of the project, and financial need of the agency or municipality.
7. Training and certification of water supply operators and wastewater treatment facility operators. After July 1, 1972, all such people must be certified.
8. Establishment of a long-range water quality plan. Such plans for the ten major river basins are currently being done with federal funds. Future work includes similar plans for the smaller watersheds.

To aid with the administration of the sewage treatment plants, sanitary districts may be established; they are discussed later in the section on special purpose districts.

Through the permit system, the division requires waters being returned to streams and lakes to comply with established water quality standards.

Another potential method of enforcement, the classification of the state's water as to use, involves too much testing to show that the required standards are being abused. The PCA has broad injunctive powers to stop activities causing pollution; in addition, a suit may be filed in district court, but the maximum fine for a misdemeanor is \$300/day. To prevent duplication of costly treatment facilities, the PCA can require adjoining municipalities to share such facilities; if municipalities hesitate in constructing needed facilities, the PCA may take over responsibilities such as taxing to raise the needed funds, beginning plans, etc.

Information Systems

All rules, regulations, standards, and classifications are published for public reference. The PCA desires a system for quick retrieval of data; this would be co-ordinated with data from other agencies, allowing better use of existing information.

Intergovernmental Relations

The PCA maintains informal relations with DNR, SPA, the Departments of Health and of Agriculture, etc., primarily for project information and data exchange. DNR and Health in particular were consulted as the standards were set. In addition, a representative of the PCA sits in on the board meetings of the State Soil and Water Conservation Commission. It is often consulted about the requirements for and the implications of its standards; since the PCA has police powers to enforce these standards, its decisions must be accepted by other agencies.

The Department of Health does the laboratory work for the PCA, and its district officers often serve as sampling units and information sources

for the more budget-limited PCA. Additional co-operation with DNR will occur as water quality plans are developed in relation to shoreline management.

Clientele

Technical services of the PCA are used by those interested in establishing water supply and waste treatment plants, its monitoring capabilities and enforcement powers by those desiring to maintain water quality. Engineers exert the most influence on the PCA, for they fill most of the staff positions and are therefore in charge of agency plans and actions. The money needed to construct adequate sewage facilities has become a distinct problem for the smaller communities, particularly those of a stable or declining population; the emphasis on municipality facilities has resulted in many smaller independent plants, rather than using a co-ordinated regional systems.

PCA's ability to review all discharges into the state's waters give it the same power to affect growth and development that DNR has in its own permit system. With its standard-setting capability, the PCA can directly determine the quality of Minnesota's waters.

Review Mechanisms

Procedures have been established so that the state attorney general or any party to an action may appeal either an order or a permit decision or seek to change an existing regulation. The appeal is taken to the appropriate district court within 30 days after the contested item is received. After both the PCA and the appellant have supplied the facts upon which their decisions were made, the court either concurs with

the reasoning of the PCA or suspends the action and remands it to the PCA for further consideration; the burden of proof is on the appellant. The entire proceeding can be rather tedious, taking up to nine months or longer. The process can be by-passed in an emergency situation, then the state attorney general may take immediate legal action.

The nine member Agency, all of whom are citizens, must approve all decisions and actions of the PCA. This permits citizen review of the pollution control activities, and also provides co-ordination of the divisional activities with general policy. Legislative review is maintained by budgetary allocations and the provisions in the enabling legislation.

WATER RESOURCES BOARD

The WRB is an executive agency established in 1955, Minnesota Statutes 105.71. It is funded entirely by legislative appropriations.

Rules, Regulations, and Policies

The WRB has not yet issued criteria upon which the decisions to establish a watershed district are made; it is now at the discretion of the Board. Since its ability to resolve conflicts about water law has been used only rarely, there has not been a need to establish rules for such a procedure. The Board is not formally concerned with the actual management of the watershed districts, and thus should not be considered as a planning body; however, its ability to resolve water policy questions does give it the potential to effect the policies of many agencies.

Function

The WRB is composed of five members, each required to be knowledgeable of Minnesota watershed conditions and problems; they are appointed by the governor for a six year term. The staff currently consists of an administrative secretary and an office secretary, but the WRB may call upon other agencies to make special reports, etc., and to assign personnel temporarily to the WRB.

The enabling legislation and the Watershed Act of 1955 gives the WRB two functions:

1. Establishment of watershed districts. Upon petition from authorized citizens, the Board gathers facts, holds hearings, and decides if the proposed district will indeed help in the solution to problems of flooding, improvement of stream channels, providing water for irrigation, etc.; a copy of the petition is also submitted to the director of DNR's Division of Water, Soils and Minerals for comment. After ruling on the proposed district and appointing the first board of managers, the WRB directs the activities of the districts as follows:
 - a. Within a reasonable length of time, the managers must submit a general plan for the district to the WRB; after a public hearing, the WRB prescribes an overall plan; this is submitted to DNR and to any affected municipality and soil and water conservation districts.
 - b. Each petition for projects done in the district is submitted to the WRB and DNR for comment.

- c. Appeals by persons affected by district decisions are heard by the district courts or by the WRB, both of whom can award monetary damages in certain instances.
- d. The processes of termination and enlargement and withdrawal of territory also come under the jurisdiction of the WRB.

These contacts are provided for in the law, but the degree to which they are used varies.

There are currently 31 watershed districts; 14 were established in the first ten years, 17 in the last four. They are discussed in more detail later in the section on special purpose districts.

- 2. Resolution of water law conflicts. The enabling legislation allows intervention "where use, disposal, pollution, or conservation of water, or a purpose, incident, or factor in a proceeding, is the question or questions of state water law and policy involved, including either (a) determination of the governing policy of state law on the proceeding, resolving apparent inconsistencies between different statutes, (b) the proper application of that policy to facts in the proceeding when application is a matter of administrative discretion, or both (a) and (b) (Minnesota Statutes 105.73)." Since Minnesota's water law is fragmentary, a need was felt for a forum whereby the statutes would be clarified, and inter-agency conflicts resolved.

A petition can be submitted by any party to the proceeding (action) in question, the governor, any director of a division in DNR, the commissioner of DNR, the head of any state agency, any involved body of the federal government, or any person or group of people that the WRB considers representative; in addition, the court may refer procedures enumerated in the enabling legislation to the WRB. The filing of the petition abates the proceeding. If the WRB determines that the petition involves water policy, it will intervene, and a public hearing is set. The decision of the WRB addresses the course of action to be followed by the agency in the proceeding; it is announced within 60 days of the hearing and based entirely upon evidence presented at the hearing. There is no appeal.

This function has been used eight times, with the WRB refusing to intervene in two cases. The question asking why it has not been used more often has an interesting answer: the petitions that initiate WRB action have not been filed. Money allocated for this purpose in the 1972 and 1973 fiscal years was \$5,000 each.

Intergovernmental Relations

The DNR, Division of Water, Soils, and Minerals, is consulted on matters discussed above. Informal contact with other agencies is maintained through the Water Resources Co-ordinating Committee.

Review Mechanisms

The WRB is a review mechanism. Its decisions concerning the establishment of watersheds and appeal matters are final. The legislature, in passing the laws related to water policy, does have some influence on the WRB.

STATE SOIL AND WATER CONSERVATION COMMISSION

The S&WCC is an executive agency created pursuant to Minnesota Statutes 40.03 to provide for soil and water conservation; its administrative functions are funded by state appropriations, but it receives technical help and personnel from the USDA Soil Conservation Service.

The Commission is composed of four ex-officio members -- the heads of the Departments of Agriculture and Natural Resources, the dean of the Agriculture Institute at the University, and the Director of the Agricultural Extension Service, also at the University; the remaining five members are appointed by the governor from a list submitted by the State Association of Soil and Water Conservation Districts, and serve for five years.

Its functions include:

1. Organization of soil and water conservation districts. These districts now cover all Minnesota land except Ramsey County, and were established after a petition by citizens in the proposed district was approved by the S&WCC. Their primary purpose is to provide the expertise, co-ordination and impetus for conservation measures.
2. Determination of priorities on conservation work to be done by the federal Soil Conservation Service.
3. Helping with the administration of funds and with the program plans for each district.
4. Rule upon petitions to establish small watershed projects.
5. Recommendation of planning priorities for the small watershed projects.

6. Provision of technical assistance to the watershed districts.

The soil and water conservation districts are public corporations, and are considered in more detail in the discussion of the special purpose districts in the next section of the paper. The small watershed project is not a governmental body.

Soil conservation districts are the principal means for local administration of small watershed projects under the Watershed Protection and Flood Prevention Act (Public Law 566). This Act authorizes the Secretary of Agriculture to give technical and financial help to local groupings for flood prevention, recreation, water supply, etc., on areas of no more than 250,000 acres. Private citizens petition the S&WCC for help from the federal Soil Conservation Service. Environmental impact statements are required for each P.L. 566 project. By following this procedure, the need for a separate watershed district is circumvented.

Both the small watershed project and the soil and water conservation districts are begun by local initiative; local action sees that the plans are carried out. The S&WCC does not have the authority to compel compliance with the district plans and projects; it can reallocate priorities for funding and provision of technical assistance. It is primarily a central office and partial review mechanism for the local districts.

DEPARTMENT OF HEALTH

This executive agency does the laboratory work for the PCA, with its district offices often serving as sampling units and information sources for the more budget-limited PCA. Its primary concern is with

preventing water-associated hazards and monitoring municipal and private water supplies.

WATER RESOURCES CO-ORDINATING COMMITTEE

The WRCC is an ad-hoc creation of the State Planning Agency, composed of representatives from the Departments of Natural Resources, Agriculture, Health, Economic Development and Highways; Pollution Control Agency, State Soil and Water Conservation Commission, Water Resources Research Center at the University, Water Resources Board, Metropolitan Council, League of Minnesota Municipalities, Association of Minnesota Counties, and other agencies concerned with water resources policy. It serves as a review and discussion board for the SPA policies, and also as an information exchange mechanism for the member agencies. Its publications, primarily written by the SPA, are funded by federal monies from Title Three of the Water Resources Planning Act (Public Law 89-90); they include an assessment of Minnesota's water resources and water problems, present and future, and suggestions for plans to fulfill these needs. This is a staff-level organization, with strictly advisory powers.

The recent re-organization has left the WRCC in a state of suspension, since most of its planning functions and its federal monies were given to DNR. Its role as a forum for discussion of agency positions on various questions is still very necessary.

SPECIAL PURPOSE DISTRICTS

Several types of special purpose districts have been organized, each dealing with different aspects of water resource management.

Co-ordination of the districts is necessary, for they have been responsible for most of the projects completed to date. Their primary advantage is that they are governmental units, with jurisdiction over the many local units inside their boundaries; this gives them the geographic scale necessary for significant resource management without the red tape usually associated with inter-municipality and inter-county cooperation. They are sensitive to local attitudes, for their establishment and their projects are usually initiated by petitions in the area. In addition, they simplify administration procedures for the state and federal agencies concerned with water resources management.

The problems are easily described: there are a multitude of jurisdictional lines, and co-ordination between districts and local units to establish a general water resource plan has not yet been undertaken. Dependence upon local initiative makes implementation of a comprehensive plan difficult. Finally, the ability of some district boards, not elected by the general public, to levy taxes has caused local resentment.

There are six types of special purpose districts:

1. Watershed districts. These are public corporations established by the Watershed Act of 1955 for the purpose of the conservation and management of waters. The districts are funded by an annual tax of up to 3 mills or \$75,000, whichever is less, levied on the county. The districts are established by petition to the Water Resources Board, which then appoints the first board of managers. The managers write the general plan for the watershed, write such rules and regulations as are necessary, and make policy decisions; they also determine the amount

of money to be requested from the county and may borrow funds without formal review. Successors to the first board of managers are appointed by the county commissioners, in some cases from a list submitted by local units in the district. The district itself has the powers associated with being a public corporation; it may also tax, issue rules and regulations, and assess property. It has the power of eminent domain and some zoning capabilities.

Work on water conservation projects must be initiated by petition, allowing policy implementation to be rather haphazard. The managers make the final decisions concerning projects to be undertaken, aided by comments from the WRB, an engineer, three citizen appraisers, and a public hearing.

The Division of Water, Soils, and Minerals in DNR comments on each petition, and receives a copy of the annual district reports. Both the DNR and federal agencies provide technical help to the districts.

Decisions of the board of managers of each district may be appealed to the WRB or to the district courts. There is no formal review by the governor or the legislature, although the latter can change the enabling legislation as it desires.

There are currently 31 watershed districts.

2. Soil and water conservation districts. The 91 soil and water conservation districts now cover all land in Minnesota except Ramsey County. They were established in 1937 to deal with soil erosion, but their duties have been expanded to encompass

the questions of soil and water conservation. Funds are received from the counties, technical assistance from the USDA Soil Conservation Service and other federal agencies; some funds also come from the S&WCC.

The districts are governed by a five-member local board. This board of supervisors devises a plan for the district, which the co-operating federal agencies examine to determine the extent of their involvement. The individual landowner, on the basis of advice from these agencies, then enters into a plan of action; this is a contract between the landowner and the district, specifying the duties of each and the help required. Work cannot be done on land without the consent of the landowner, who also pays for most of the improvements installed.

A quarterly newsletter, The Natural Resources Management Newsletter: Minnesota Soil and Water Conservation Districts, is published by the S&WCC.

When the district lacks the local authority or financial means to administer a project alone, an interaction with other local units is established. The local board submits its budget to the county commissioners for consideration, and seeks county help in condemnation proceedings. They co-sponsor 95% of the actions undertaken by the small watershed projects. Memorandums of understandings are maintained by each district; the Division of Forestry and the Division of Game and Fish of DNR, the USDA Soil Conservation Service, the federal Fish and Wildlife Service, and other federal agencies can be thus connected.

Federal agencies exert the greatest outside influence. Because they provide the expertise needed, they can affect the types and nature of the project undertaken. The districts have been used as the basic instrument for conservation activity on rural land, and have been primarily concerned with agricultural needs. There is now a drive to consider the problems peculiar to municipalities.

There is no formal review mechanism, although the local boards have been very sensitive to criticism.

3. Small watershed projects. Unlike the other five, this special purpose district is not a governmental unit. It is discussed in more detail in connection with the S&WCC. It is administered by any legally qualified local organization, with its projects funded by federal and local funds. The local organization must obtain all land rights needed, and maintains and operates any facilities installed.

The small watershed project is again initiated by local action, its scope being determined by the project proposal in the petition.

Relations are maintained primarily with the federal Soil Conservation Service, the S&WCC and the soil and water conservation districts. It serves local needs.

4. Sanitary districts. Sanitary districts are created by the legislature on the advice of the PCA, dealing with domestic sewage and industrial wastes. The district is funded by a tax levied on the property in the area; construction money comes from varied sources.

They have substantial authority in connection with the construction, maintenance, and operation of these systems, including the powers of taxation, and eminent domain. District ordinances and regulations supercede those of the related governmental subdivision, yet the district itself is subordinate to the PCA and the Department of Health.

Each district is governed by five citizens, who are nominated by petition and elected by the members of the related governing bodies. The board enacts ordinances and adopts rules and regulations; it may decide that violation of any ordinance may be a penal offense. The board levies taxes that are not subject to any previous legal limitation, at least until June 5, 1976, on property in the district; areas benefiting from district actions may receive special taxes that will pay for the maintenance or construction of these facilities. In addition, the board determines the amount of money to be raised each year, and authorizes the sale of bonds or borrowing of funds for district purposes.

The districts have many enforcement procedures:

1. People can be compelled to use these systems.
2. The board determines the penalties for violation of its ordinances, these penalties being no more rigorous than current village penalties.
3. All other systems in the district must be approved by the board in order to continue functioning.
4. The board may prohibit the use of any facility -- cesspool,

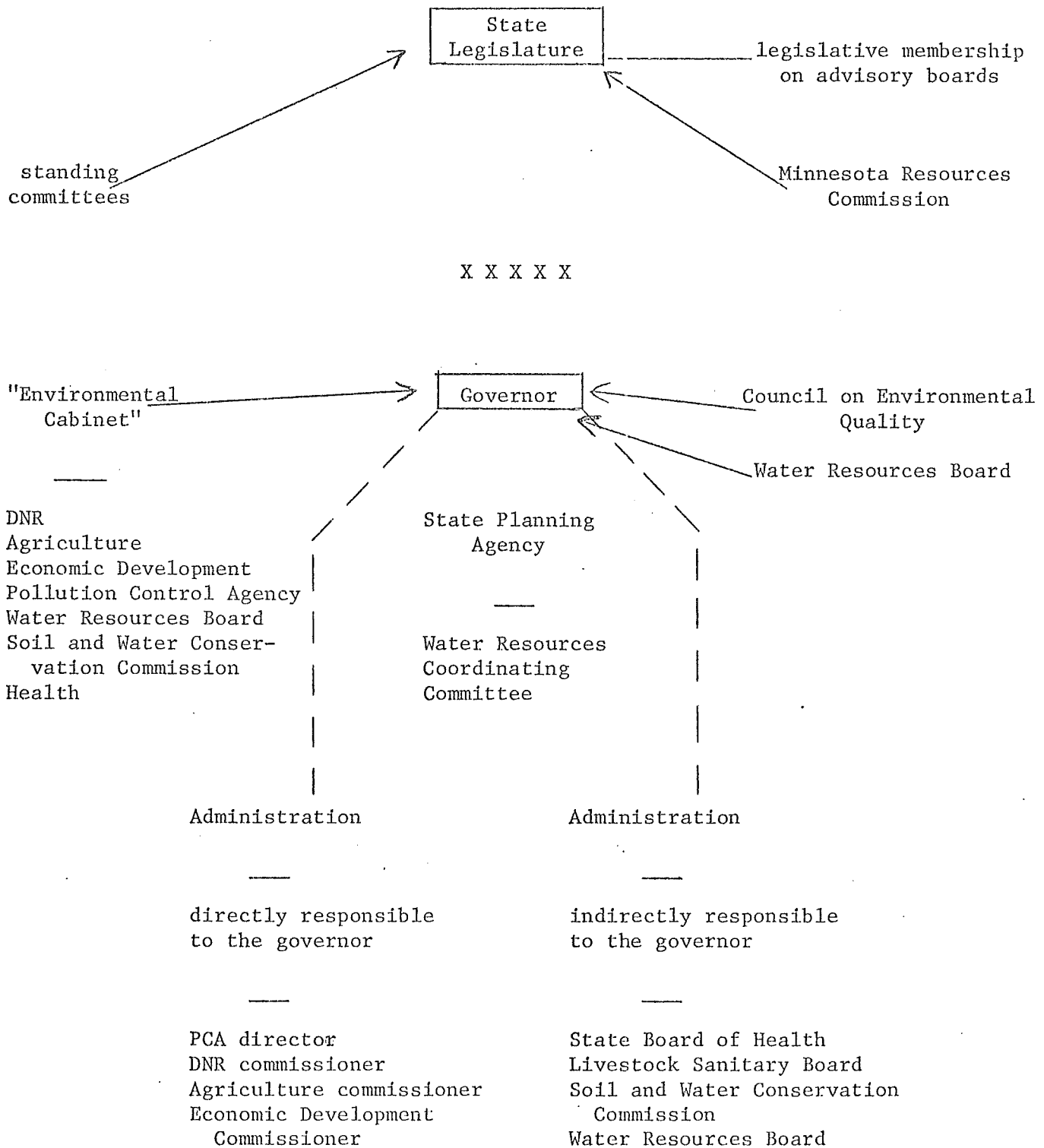
toilet, septic tank, etc., if it is a nuisance or threatens the public health, safety and welfare. The enforcement powers of the PCA are used to ensure compliance with standards for water quality.

Close relations are maintained with PCA and the Department of Health; the districts fulfill enforcement and administrative functions of both agencies. Federal funds are used, so some federal influence is felt.

There are presently six sanitary districts.

5. Lake management districts. These public corporations are established by special legislation, which details the terms upon which the municipalities agree to co-operate in managing lake resources. Two have been established, one in 1969 for Lake Minnetonka, and one in 1971 for White Bear Lake. Each agreement varies; it generally includes representation of each town on a board that can regulate use of the surface waters and activities on the surrounding land that would affect such use. The districts are funded by a tithe of the municipalities.
6. Drainage and conservancy districts. No more conservancy districts may be established; four remain, for the others have become watershed districts. It is predicted that in five years all the conservancy districts will have converted. These districts primarily maintain federally-funded installations.

ORGANIZATIONAL CHART FOR MAJOR WATER POLICY-MAKING



(adapted from Citizens League memo)

PART IIIINTERVIEWS

DATE: June 29, 1972

NAME: Lovell Ritchie
 TITLE: Assistant director, Water Quality Division; PCA
 ADDRESS: 717 S. E. Delaware
 Minneapolis, Minnesota
 TELEPHONE: 378-1320

- Staff outline given. WQ budget is 60% PCA budget
- Regulatory agency
 - police powers--injunction powers, effluent permits, warnings
 - standard setting
 - reviewal procedure est. by law hearings, etc.
 - class of waters completed by use (too cumbersome for enforcement)
 - DNR can impose, PCA needs hearings
- Staff initiates actions, esp. municipal ones
- Legal action only if at standstill (L. R.: time lag over procedure OK, solutions take time)
- Action now to prevent pollution; not just health hazard
- Lines of jurisdiction
 - a sanitary districts: special purpose districts, treated as municipality for admin. purposes
 - F- don't cover state; set up by special legislation
- Watershed involvement -- developing plans for 5 metro areas and 10 major river basins by July, 1973. L. R.: no conflict w/WRB & S&WCC
- Interagency relations, informal communication
 - L. R.: no conflicts, since all agencies have different purposes
 - Health does lab work
 - need more data exchange -- computer system
- Follow through not good -- staff, budget limitations
 - non-existent for industries, OK for larger towns
- Policy formulation
 - originates own policy where statutes not clear
 - policy approved by 9 member citizen Agency board, which is not rubber stamp
- L. R.: Need personnel, info system more than more powers
 - in emergency, can take immediate action
 - WRCC as info-sharing, informal conflict resolution, not as initiating body -- CEQ should. WRCC ad hoc, staff.
 - PCA is technical agency.

DATE: June 29, 1972

NAME: James Forsyth

TITLE: Resources planner, SPA; currently with DNR

SUMMARY:

SPA: duties

- detailed planning, WRCC to go to DNR
- land use, growth, inter-state relations to remain
- agency initiates planning action (p. 1. 89-90 funded; exp. 1975)
 - currently collecting data-background for planning
- advisory only: publications
- legislative guidelines;
 - If: no contact so far, so have copped out. If none from '73 session, then set own policy from previous laws
- WRCC its interagency contact
- if interagency conflicts, to WRCC, or inaction (DNR, PCA, Healm)
- Jf: since advisory, needs no additional powers

WRCC: off-shoot of SPA, 1967

- ad hoc; members: all water-related agencies
- discussion, etc., of SPA-authorized policies for water policy
- publications
- interagency exchange on staff level
- Jf: since has no authority, decision-makers not on WRCC, has different purpose, does not see it as future conflict resolution board.

WRB: Jf: apparently superfluous

- not enough funding to carry out conflict resolution purpose (used 3-4 times)
- est. watershed districts
- if conflicts now, go to PCA or DNR, on local level, interstate: no mechanism, yet

S&WCC: is also concerned w/watersheds

- est. separate S&WCC districts
- awkwardness of the two different service districts
- attempt to combine them at '71 session
 - PCA, DNR want state control
 - legislative report, and SPA, recommend continued local control

DATE: July 5, 1972
NAME: Howard Crant
TITLE: Soil and Conservation representative, Soil and Water Conservation
Commission
ADDRESS: 130 North Hall
University of Minnesota

SUMMARY:

1. Taxing authority
 - watershed districts have taxing and eminent domain powers.
 - county commissioners can tax, have more land rights so most of the 91 soil and conservation districts submit budget to them; this is their major source of funds -- the rest comes from the S&WCC.
2. Watershed authority -- small watershed projects
 - Public Law 566 -- application for assistance in watershed; federal funds used; no separate districts established
 - H. G.: S&WCC could handle all watershed duties, since it gives technical assistance to the watershed districts, anyway.
3. Soil and Water conservation districts
 - 1971 legislature included municipal, village, state, and Indian lands as being eligible.
 - now the districts cover all land except Ramsey county.
4. The district boards
 - request work to be done by federal technicians
 - there is no formal review of board decisions, but they are very sensitive to complaints
5. Interagency contact
 - PCA attends S&WCC meetings

DATE: July 12, 1972
NAME: Eugene Gere
TITLE: Director, Division of Water, Soils and Minerals; Department of
Natural Resources
ADDRESS: Centennial Building
St. Paul, Minnesota
TELEPHONE: 296-2445

SUMMARY:

1. 2,000 permits now given yearly; this is greatly expanded since the system was established in 1947.
2. There are varying authorities on different water use areas.
3. Permit decisions
-applications are given individual consideration, the decisions are based on the reputation of the user, English Common law, Minnesota statutes, technical reasons, etc.
4. Enforcement powers
-first, withdraws permit
-can sue through district court; infractions classified as a misdemeanor, with the fine \$300/day maximum.

DATE: July 27, 1972

NAME: Erling M. Weiberg
 TITLE: Administrative Secretary; Water Resources Board
 ADDRESS: 555 Wabasha, Room 206
 TELEPHONE: 296-2840

FUNCTION: Administers watershed petitioning

SUMMARY:

1. Duties of WRB -- EVERYTHING INSTIGATED BY PETITION
 - a. accepts applications for watersheds
 -DNR, Division of Water, Soils, and Minerals, comments on it.
 - b. acts, if petitioned, to resolve conflicts of interpretation of water law.
 - c. holds public hearings, if desired, on plans by the individual watersheds
 -final decision made by watershed manager
 - d. is not concerned with actual district management
2. Established in 1955; independent executive agency; quasi-judicial
3. Funding:
 - a. WRB: state appropriations, if they spend money on conflict resolution, appear before legislative appropriations committee, and are re-imbursed.
 - b. districts: funded entirely by their districts: taxation
4. Watershed districts
 - a. powers
 - taxation, decide how much needed, then tax to that amount, maximum -- 3 mill or \$75,000.
 - eminent domain for land needed for watershed activities
 - assessment, in conjunction with the above 2 powers
 - issuing of rules and regulations concerning watershed activities, only some districts have felt them necessary
 - b. duties
 - manager unites general plan; cannot set priorities or criteria
 - actual projects begun after manager is petitioned
 - zoning: has some say about location of developments on flood plains of mud-bank creeks
 - c. enforcement
 - has no powers there. If Water Quality infractions occur, use PCA
 - E. W.: if the districts were given enforcement powers, would also work since districts are not state-wide, powers were given to state agencies.
 - d. long-range planning
 - that plan, which is activated by local concern and agreement
 - stresses physical things
 - districts are not really planning areas

- e. 31 districts now: as many established in last four years as in first 10.
 - f. MUCH MORE FLEXIBLE THAN WORKING THROUGH MANY MUNICIPALITIES AND COUNTIES
 - Joint Powers Act too cumbersome
5. Interagency relations
- a. co-ordination
 - DNR contact very close: comments on watershed applications, receives copy of yearly district plans
 - watershed, if notified -- and is supposed to be, comments on DNR water permit applications
 - b. conflict
 - have more powers than soil and water conservation districts
6. Conflict-resolution powers
- a. not used since no-one petitions
 - b. would get money if used
 - c. used 4 times
7. Special independent districts
- a. lake conservancy districts -- 2
 - rather than Joint Powers Act
 - restricted in powers: can issue rules/regs.: locations, use
 - surface lake use, primarily
 - b. conservancy districts -- 5
 - to maintain federal projects; no more can be created
 - provisions made in law so they can convert to watershed district
 - 4 already have -- in 5 years, all probably will
8. General philosophy
- a. local initiative, state guidelines
 - b. many special purpose districts give people choice on way of doing things

RECOMMENDATIONS:

Read 1955 Interim Committee Report on Drainage, Water Conservation, Floods.

DATE: July 25, 1972

NAME: Eugene R. Gere

TITLE: Director, Division of Waters, Soils, and Minerals, DNR

ADDRESS: 3rd floor, Centennial Building
St. Paul, Minnesota

SUMMARY:

1. Permit system

-types

- a. water appropriations - ch. 105.41 -- anyone using water
-exceptions -- domestic use for less than 25 people,
grandfather clause for municipalities
- b. changing of course, current, cross-section of water ch. 105.42
-shoreline, too
-public waters: "capable of beneficial public use", problem
of definition -- consider each case separately
- c. utility crossings through public water
-permit and lease
-problem of definition: who really owns the water bed?
- d. underground gas storage -- future anticipation of need

-procedure

- a. forms: submit to DNR; concurrently to affected local
governmental unit, watershed district for comment
- b. hearing called at discretion of DNR: controversy anticipated, etc.
- c. permit approved/approved with conditions (most are)/denied
-conditions vary with permit
-can evaluate alternative sites, suggest new ones
- d. environmental impact statements
-only county, other highways with federal funding
- e. economic implications considered, but physical criteria the
most important
- f. each permit "judged on its merits"

-enforcement

- a. no field staff; rely on 145 conservation officers to check each
proposed site before approval, watch for infractions
- b. violations of permit conditions:
-civil court -- misdemeanor -- \$300/day maximum
-suspend permit -- activity must stop
-if after suspension activity continues, DNR can go to district
court for injunction order

-appeal

- a. lawsuit in district court -- any affected party in DNR
- b. if no hearing held prior to decision on permit, one can
be requested in 30 days; then in 60 days, an executive
order is issued; order can be appealed through district
court (has not been used) ch. 105.47

- clientele -- in order of use
 - a. private citizens
 - b. highway department
 - c. county, municipalities for highways
 - d. industry

- 2. Watershed responsibility
 - jurisdiction
 - a. supply technical assistance, plans, etc., for watershed district projects, S&WC districts
 - b. co-ordinate state agencies and 4 federal agencies (USGS, Soil Conservation, HUD, Corps of Engineers)
 - some interaction then with special purpose districts
 - a. conservancy districts -- 4; ch. 111
 - b. lake conservation districts -- '69
 - Minnetonka, White Bear Lake
 - special legislation
 - to allow joint action of municipalities
 - reps from each town, financed by communities
 - c. with municipalities and counties -- shoreline management
 - premise: state policy, local action

- 3. General responsibilities
 - planning water policy ch. 105.39 -- general policy made -- staff limitations have prevented this. Long range planning now being done by Bureau of Planning, former SPO water planners, federal funds.
 - SPA to co-ordinate functional plans of agencies, not to formulate them
 - long-range water quality planning by PCA
 - co-ordination with other agencies
 - a. WRCC, PCA, etc., -- informal
 - conflict resolution
 - a. need contact with other agencies, task forces, etc.
 - b. conflicts resolved by chief executive
 - informal sharing
 - a. basic need
 - b. also data sharing, state-wide system, to cut down time for obtaining information
 - lake water classification
 - a. relative to shoreland management
 - b. 4 classes; all lakes more than 25 acres classified
 - c. standards for lakeshore development; set in consultation with PCA, Health, etc.

- 4. Budget
 - all state funds, except federal planning funds

- 5. Problems
 - no field staff for investigations, enforcement
 - getting municipalities together to take action
 - Joint Powers Act provides for this
 - no data sharing system
 - need better permit laws; definitions
 1. better guidance from legislature to ease administration
 2. easier for public to understand

DATE: July 28, 1972

NAME: Perry Beaton

TITLE: Section of Municipal Works, PCA

ADDRESS: 717 Delaware St. S. E.
Minneapolis, Minnesota

TELEPHONE: 378-1320

FUNCTION: Engineering reports, permits, etc.

SUMMARY:

1. Variances to standards are granted, if requested: time extensions, special conditions, etc.
2. The nine-member agency board must approve all variances
3. Recently, very hard to get variance approved -- one last year of the 10-15 requests.
4. Permits granted in the past are being continually reviewed and can be revoked.
-Reserve Mining has such a permit.

DATE: July 28, 1972
NAME: Richard Anderson
TITLE: Accountant, PCA
ADDRESS: 717 Delaware St. S. E.
Minneapolis, Minnesota
TELEPHONE: 378-1320

FUNCTION: Accounts and finances

SUMMARY:

1. Funding of the water quality division, 1973 fiscal year
state - \$1,050,000
federal - \$ 241,000
2. Increases in state funding much higher than federal -- \$200,000
as opposed to \$10,000 last year.

DATE: August 4, 1972

NAME: Paul Solstad
TITLE: Environmental planner; State Planning Agency
ADDRESS: Capital Square Building; Room 802
St. Paul, Minnesota
TELEPHONE: 296-3985

SUMMARY:

1. SPA:
 - a. in conjunction with circular A-95, acts as state clearinghouse for requests for federal aid; it receives copies of all requests, and co-ordinates environmental impact statements
 - b. current projects: developing a statewide policy on growth, development; water resources policy will be one facet of this.
 - c. reorganization: in the planning for two years

2. WRCC:
 - a. to use federal funds from Title 3 of the Water Resources Planning Act
 - b. ad hoc, called together by previous secretary of SPA
 - c. suspended since reorganization; met once, to consider a study on an inter-river basin

RESOURCESLiterature

Water Resources Coordinating Committee; "Minnesota Water and Related Land Resources"; June 1970

_____ ; "Policies for Planning Minnesota's Water and Related Land Resources"; August, 1971

Haskell, Elizabeth; "Managing the Environment: Nine States Look for New Answers"; April, 1971

Citizens League; "Needed: Better Ways of Making Environmental Choices"; January 13, 1971; Minneapolis

_____ ; minutes for its report

Minnesota Legislative Manual; 1971-1972; St. Paul

Legislation

Watershed Act of 1955: Minnesota Statutes Chapter 112.34-112.85

Enabling legislation:

Department of Natural Resources; Minnesota Statutes Chapters 84-105

Pollution Control Agency; Minnesota Statutes Chapters 115-116

State Soil and Water Conservation Commission; Minnesota Statutes Chapter 40 -

State Planning Agency; Minnesota Statutes Chapter 4

Water Resources Board; Minnesota Statutes Chapter 105

Rules, Regulations

Minnesota Pollution Control Agency; "Rules, Regulations, Classifications and Water Standards"; 1968, 1969, 1971 editions. WPC 1-32

CHAPTER IISHORELAND MANAGEMENT AND DEVELOPMENT EVALUATIONPART IINTRODUCTION

Lakes and streams are two of Minnesota's most valuable natural resources. Rapidly expanding recreational needs, as well as increased agricultural, domestic and industrial demands, must be satisfied from a water supply which is fixed in quantity. While being aware of this fixed supply we must also recognize that the economy of many areas of the state is dependent upon the quality of the waters and their shorelands.

As demand increases for limited shoreland building sites, land values rise. Lots with water frontage are subdivided into small parcels. Scattered cottages and resorts merge to form continuous ribbons of development along lakes and streams. Natural vegetation and scenic beauty may be destroyed; nutrients and other pollutants from private waste disposal systems may concentrate in the ground water; and conflicts may increase between land uses. Marginal lands with high ground water, flooding conditions or steep slopes are often improved and developed in spite of their physical unsuitability for development.

This section will evaluate Minnesota's efforts at shoreland management to date in order to suggest possible directions for future shoreland legislation. The scope of inquiry includes the strengths and weaknesses of the shoreland legislation, the coordination between governmental units responsible for ensuring adequate shoreland

management and the source and scope of their authority, the administrative problems of the governmental units charged with shoreland management, the externalities of shoreland legislation, and information systems which need to be developed in the near future.

The definition of shoreland to be used in this report is that found in Minnesota Statutes 105.485, Subd. 2: Shoreland is land located within 1,000 feet of the normal high watermark of a lake, pond, or flowage, and land within 300 feet of a river or stream on the landward side of a flood plain delineated by ordinance on such a river or stream, whichever is greater.

SUMMARY AND EVALUATION

After evaluating the various aspects of the shoreland management programs in Minnesota, the following weaknesses can be detected at this early date in its development:

- (1) Although the impetus for a shoreland management program was generated by water quality concerns, i.e. pollutants from private waste disposal systems increasing the rate of lake eutrophication, the formal coordination of water quality protection and shoreland management is still discussed only in terms of a future goal. Presently, shoreland protection is directly or indirectly the duty of the Pollution Control Agency, the Department of Health, the 32 Watershed Districts, 87 counties, and three divisions of the Department of Natural Resources as well as the Water Resources Board. Similarly, there exist 14 agencies responsible for water quality protection. These agencies, departments, and divisions

occasionally interrelate with one another. Each independently establishes goals, seeks funding and attempts to implement programs. However, there is no attempt to consolidate and evaluate these efforts at a specific point in time, using uniform goals and criteria for judgement. There should be formal cooperation between shoreland management and water quality protection from the initial stages and continuing throughout any particular water resources program.

- (2) Municipalities' shorelands should operate under at least the minimum standards now required for unincorporated shorelands. A statewide shoreland policy cannot be effective when it excludes any portion of the total shoreland acreage. Municipalities have the power to zone, but they may not use it to protect their shoreland. Such a system creates great inconsistencies. For example, if one section of a lake were under county jurisdiction and the other under municipal jurisdiction, a single lake could have two completely different development policies and regulations.
- (3) Presently, DNR can only use a "stick" if counties do not comply with the 1969 legislation; this can only cause animosity between the county and DNR. A grants-in-aid "carrot" should be given to the counties for the preparation and enforcement of shoreland development plans and ordinances. As the 1969 legislation stands, no positive incentive is offered to counties.

- (4) Although the value of seeking a writ of mandamus has not been tested as of yet, this method is an indirect means of enforcement. A more effective and direct means of enforcement would be to vest in DNR the power to bring a civil suit against the offending county. Also, DNR should have sufficient personnel to adequately monitor the counties, i.e. on-site inspection.
- (5) DNR spent an extensive amount of time with the Metropolitan Council reviewing lake classifications. Unfortunately, the other 10 state regional councils were not developed to the extent that the same planning and reviewing process could be initiated by DNR. Regional councils could also aid DNR in evaluating county ordinances and variance procedures. This regional planning process could be used to counter any county parochialism which threatens to endanger a region's economic, environmental and social well-being.
- (6) The 1969 Shoreland Legislation and the model ordinance should be rewritten and the 1959 Zoning Enabling Act should be updated in order to clarify legal inconsistencies and administrative procedures. (See interview with R. W. Snyder).

PART IIDIVISION OF WATER, SOILS AND MINERALS, DEPARTMENT OF NATURAL RESOURCESSource and Scope of Authority

The management and development of Minnesota's shoreland is the responsibility of the Division of Waters, Soils and Minerals of the Department of Natural Resources. DNR was charged with this administration duty by the 1969 Minnesota Legislature which had recognized the many potential and existing threats to the quality of Minnesota's public waters. Through the Minnesota Trust Doctrine, the state is responsible for ensuring public use and enjoyment of Minnesota waters. Since public waters and their shorelands are management units, the 1969 Legislature passed a bill, Laws of Minnesota 1969, Chapter 777, which requires counties to adopt land use controls by July 1, 1972 in order to guide development of shoreland areas, to preserve and enhance water quality, and to preserve economic and natural environmental values of shorelands. Chapter 777 also directed the Commissioner of Natural Resources to adopt standards to serve as a model for the counties' Shoreland Management Ordinances.

The general legal authority for county planning and zoning, including shoreland management (except for Ramsey and Hennepin counties, which have similar authority under other laws), is found in Minnesota Statutes 394.21 - 394.37. The County Planning and Zoning Law was enacted in 1959. There have been a few amendments to the Law, but its basic thrust remains unaltered. County planning and zoning under this Law apply only to those areas of the county outside the incorporated limits of a city, village,

or borough. Although approval of town boards is not required for county ordinances regulating conservation of shorelands, once the county adopts an ordinance, the township must be at least as restrictive with its ordinance.

The Division also has regulatory power in granting permits for work in the beds of public waters. This program is authorized under M. S. 105.42. Any filling, dredging, channeling, etc. must be approved by the Division before work can begin. Eventually these permit applications will be evaluated with respect to shoreland management goals and objectives and the public waters classification. A stipulation of the statewide standards prevents counties from allowing grading and filling on shorelands where the intended purpose is connection to a public water until the Division has approved the proposed connection.

Other divisions of the Department of Natural Resources have an indirect effect on the management of shoreland areas. The most important of these are the acquisition and maintenance of public accesses by the Division of Enforcement and Field Service, and the management and restocking policies of the Division of Game and Fish.

Funding

In fiscal 1972, DNR appropriated \$49,517 of its operating monies for shoreland management, allocated \$44,308 of this amount for personnel, and assigned three full-time staff persons to this program, plus some regional personnel. For fiscal 1973, \$50,489 has been appropriated with \$41,027 allocated for personnel purposes. No direct outside funding is utilized by the Division.

Rules, Regulations, and Policies

On July 1, 1970 the Commissioner of DNR adopted the Statewide Standards and Criteria for Management of Shoreland Areas of Minnesota, in accordance with Chapter 777. These standards set forth guidelines for the use and development of shoreland property, especially by establishing a sanitary code, minimum lot sizes, building setbacks and subdivision regulations. A lake classification scheme, with different standards for development applying to each class (Natural Environment, Recreational Development, and General Development Lakes), was incorporated into this program. John Borchert's Minnesota Lakeshore Study, Resources, Development, and Policy Needs was extensively utilized as the basis for this classification system.

Standards for water supply quality have been established by the Minnesota Department of Health. Comprehensive standards for waste disposal have been established by the Department of Health and the Minnesota Pollution Control Agency (PCA) in terms of construction and maintenance of individual sewage disposal systems and effluent standards for shoreland areas. Studies from the Department of Civil Engineering, Sanitary Engineering Division, University of Minnesota and from the Soils Department of the University of Wisconsin have been consulted while creating the Divisions' disposal standards. The Pollution Control Agency, by legislative act, is responsible for waste disposal regulation. Therefore it would be impractical for the Division to establish additional standards for shoreland waste disposal problems.

DNR determined minimum lot sizes by following Department of Health specifications and regulations while, placement of structures on lots

has been guided by statewide standards which call for buildings to be placed at specified distances from public waters and roads and at elevations sufficient to avoid flooding conditions.

Function

Until July 1, 1972 the Division was working with counties to establish shoreland ordinances that would comply with the statewide standards. The nature of this work involved the review of requests for reclassification of lakes and streams, preparation of informational materials, and review of draft ordinances using an evaluation checklist. Since all counties were not able to finish their shoreland ordinances by the July 1 deadline, the Division is still carrying out this function.

After July 1, it was planned that the Division play a limited administrative role. Counties are required to supply the Division with information on their zoning programs, such as notices of public hearings for variances and conditional use permits, action taken on all variance requests, and copies of all plats in shoreland areas approved by the county board. The Division must approve plans for cluster developments before they can be approved by the county. The intent here is to provide a continual review of development pressures occurring in shoreland areas to support future amendments or additions to the shoreland standards.

Looking to the future, the Division plans to work on and complete the following projects:

- (1) Merging the Surface Use program with shoreland management
(the 1971 Legislature granted the Division additional powers for regulating water surface use; Laws of Minnesota 1971, Chapter 636, Section 28 allows the Commissioner to establish

surface use regulations for public waters when he is petitioned to do so by a local unit of government);

- (2) Coordinating all water management programs;
- (3) Individualizing lake management programs (DNR is currently initiating this with their lake classification system);
- (4) Updating data systems between counties and the Division and vice versa (Borchert's data is already outdated);
- (5) Continuing close work with counties and a closer review of variances and conditional uses.

If a county refuses or neglects to adopt a Shoreland Management Ordinance and submit it to the Division or if the county fails to adopt an ordinance that meets the Division's minimum standards, the Commissioner was given the power to adopt a shoreland ordinance for any noncomplying county. Usually DNR's model ordinance is modified for the specific county's needs and problems. After a public meeting has been held on the Commissioner's proposed ordinance and notice has been given, the new ordinance is effective for the nonconforming county. The costs incurred by the Commissioner in this procedure can be billed to the delinquent county.

After an ordinance is approved and a county fails to properly enforce it, the Division has the following options available:

- (1) Since all applications for variances are sent to the Division, if the Division feels it should comment on the application, there is an opportunity for representation at the public hearing. (Applications for plat variances must be received by the Division at least ten days before a hearing

is called by the county for consideration of approval of a final plat.)

- (2) DNR can negotiate with county officials to strengthen lax administrative procedures.
- (3) A citizen in the county may seek a writ of mandamus against the offending county official for nonperformance of job duties.

As of July 1, 1972, 47 county ordinances had been adopted and approved, 16 counties had written resolutions promising the submission of an ordinance, 7 counties had promised submission of resolutions, 14 had extensions until May 1, 1973, and one county was not cooperating. Approximately one half of these counties have used the model DNR ordinance for its Shoreland Management Ordinance.

Information Systems

At this point information should be gathered documenting the impact of the 1969 Shoreland Legislation on shoreland and water quality. In addition, information should be gathered in order to update John Borchert's shoreland data system which is on tapes and cards at the University of Minnesota's 6600 Computer Center. DNR has all this existing information on microfilm.

Recently, Les Maki, Department of Administration, Information System Division, Jim Gambel, University of Minnesota graduate student, and Don Yaeger, State Planning Agency, have completed a study of the 10 to 15 different data systems (files) in the state pertaining to lakes (containing physical characteristics, fish types, lake permits, etc.). This report is in the appendix.

Additionally, the Ad Hoc Lake Improvement Committee established by the 1971 Legislature provides monies for the purpose of demonstration projects for lake improvement. The Committee attempts to determine the problems of lake water quality and the best methods available to correct the problems. These projects are usually of a technical nature, for example: a two-year, \$43,600 program to determine the nutrient budget level in Minneapolis' Chain of Lakes; and a \$12,960 grant for the construction of a sanitary sewer system and waste treatment facilities for a number of lake homes and resorts in Becker County. (The complete list of projects accompanies Eugean Karel's interview). Members of the committee represent the Center for Urban and Regional Affairs (CURA), the House of Representatives, Minnesota Resources Council, Division of Waters, Soils, and Minerals at DNR, Bureau of Planning at DNR, Division of Technical Service at DNR, University of Minnesota's Department of Geography, Office of Local and Urban Affairs, Limnological Research Center, Environmental Planning at State Planning, Department of Agriculture, Division of Environmental Health at the Department of Health, and the Department of Water Quality at PCA. Copies of the subsequent reports are sent to all of these members and their organizations. The Committee then attempts to make recommendations to the legislature for an expanded program.

Intergovernmental Relationships

Concerning shoreland management, four other governmental units share regulatory powers with the Department of Natural Resources: Watershed Districts, Department of Health, Pollution Control Agency, and the Metropolitan Council.

- (1) Watershed Districts: Minnesota Statutes, Chapter 112 (the Watershed Act), express a policy of the state in managing its water resources according to scientific principles. The act empowers the Water Resources Board to establish Watershed districts upon the request of a community and the evidence offered proving need. As of August 1972, the Board had established 32 districts. The Watershed Act provides broad powers to districts to undertake planning for and regulation of the beds, banks, and shores of lakes, streams, and marshes. Watershed districts are empowered to make surveys and perform other planning functions. Furthermore, these have the power to adopt rules and regulations to fulfill the purposes of the Act. Many of the land use regulation powers of the watershed districts are concurrent with those of townships, counties, cities, and villages. The authority over water resources can be cooperatively exercised by these municipal units by means of Minnesota Statutes, Section 471.59, the Joint Powers Act. The rules and regulations of watershed districts can be enforced by injunction or other appropriate orders of a district court. In addition, a Watershed District may levy up to 3 mills, or \$75,000; whichever is less, without a local referendum to fund its operation. Watershed Districts bring their shoreland regulations in to the Division for approval; in fact, they usually incorporate DNR's shoreland standards by reference into their ordinances. Since the Water Resources Board is located within DNR, both formal communications and coordination between it and the Division are feasible.

- (2) State Department of Health: Shoreland use is primarily administered by the Division of Environmental Health through its Sections of Water Supply and General Engineering and Hotels, Resorts and Restaurants. The Division of Local Health Administration also furnishes services through its eight district offices located throughout the state. The Section of Water Supply and General Engineering is responsible for preventing and correcting public health hazards. Specific activities include the review and approval of plans and specifications for sanitary facilities, field surveys and reports, consultation and advice, educational and training activities, and the promulgation of standards and codes. The Section of Hotels, Resorts and Restaurants issues licences or permits to hotels, resorts, restaurants, places of refreshment, boarding houses, lodging houses, motels, mobile home parks, tourist parks, and camping areas. Inspections are made to determine compliance with the laws and regulations designed for the protection of public health. This section will not accept plans and specifications for review and approval until a copy of the county's Shoreland Permit is submitted. The present regulations of the Department do not generally apply to private residential sanitary facilities. The Ordinance and Code Regulating Individual Sewage Disposal Systems, recommended by the Department, must be adopted and administered by local governmental units in order to be enforced. Presently, DNR is trying to develop more cooperation and to exchange more information with the Department of Health.

- (3) Pollution Control Agency (PCA): Individual home sewage disposal systems of the septic tank-soil absorption type are included within the authority of PCA, but are commonly controlled by local ordinances, building codes, and, in this case, shoreland management criteria. When dealing with other than individual waste disposal systems, the location of a lake and the direction of drainage are major considerations in evaluating permit applications; waste disposal is prohibited on shoreland. At this time, PCA is in the process of preparing a statement on shoreland development and management.

The design standards and location and setback requirements contained in the shoreland criteria have been worked out jointly by the Departments of Health and Natural Resources and the PCA, and the entire regulation was reviewed and approved by all three agencies prior to its adoption.

- (4) The Metropolitan Council: The Council was consulted extensively during the lake classification procedures -- the classification was reviewed in light of their own development plans. According to the Metropolitan Development Guide: Parks and Open Space, Policies, System Plan, Program, generally, the elements which are of the greatest benefit if kept free of any development are those that are necessary to assure proper functioning of the hydrologic system such as creeks, streams, rivers, floodways, ponds, and lakes. Consequently, the Council stated in its Development Guide the following two policies concerning shoreland management:

"16. Encourage residential and agricultural soil management practices that minimize siltation and pollution of rivers, lakes, and streams."

"17. Encourage the adoption of federal, state, and multi-state regulations to control development of and along drainageways, rivers, and streams."

(5) Although the Joint Legislative Committee composed of the House Natural Resources Committee, Subcommittee on Waters and Drainage, the Senate Agriculture Committee, Subcommittee on Drainage, and the Senate Natural Resources and Environmental Committee, Subcommittee on Water Permits has no regulatory powers, it has been conducting hearings during the interim to develop recommendations on water resources for the next legislative session. Following are the draft recommendations of this Joint Interim Committee concerning shoreland management:

1. State aid

The DNR should draft, for presentation to the 1973 Session of the Legislature, a program of grants in aid to counties for the preparation and enforcement of shoreland development plans and ordinances.

2. Local ordinances

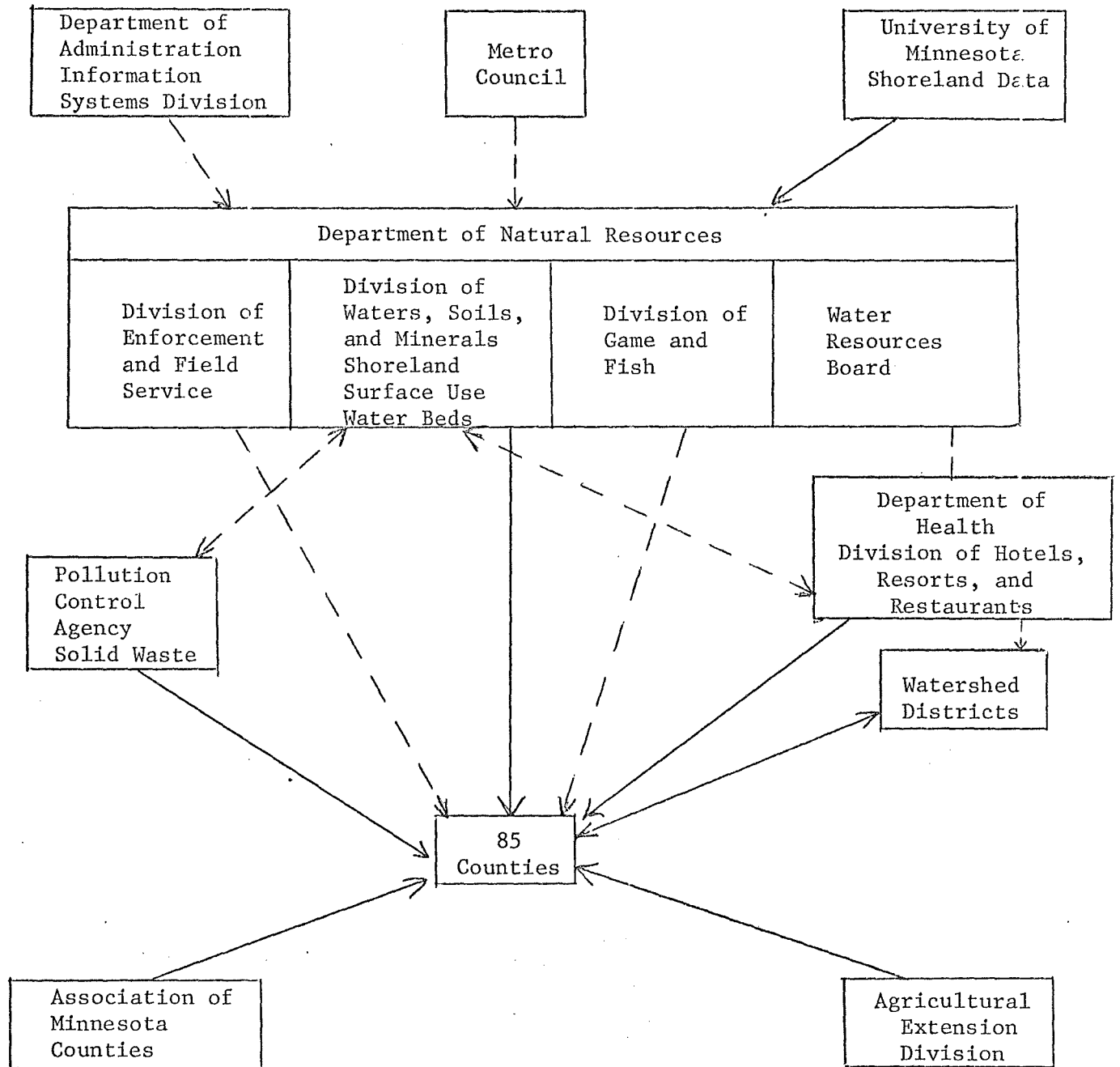
- a. Incorporated areas should be required to adopt shoreland management ordinances under DNR guidelines.
- b. Zoning ordinances adopted by counties and municipalities in non-shoreland areas should be required to be consistent with county and municipal ordinances for shoreland areas.

3. Leasing of state-owned shoreland

The practice of leasing state-owned shorelands by DNR is not consistent with shoreland management goals or proper public policy and should be discontinued.

- a. No further leases should be entered into.
- b. Where a lease has been made but no construction has been undertaken, the lease should be cancelled and refunds made.
- c. In instances where improvements have taken place on leased land, the DNR should insure compliance with shoreland management ordinances and policies and should develop procedures for cancelling within three years those leases that contain non-conforming uses.

SHORELAND MANAGEMENT



Clientele

Counties are the main "administrative" clientele dealt with in shoreland management, primarily because of their zoning authority and, of course, because of the shoreland legislation itself.

Three major problems confront counties as they attempt to implement shoreland ordinances:

- (1) When the 1971 state legislature placed an expenditure limit on the counties for 1972 (allowing a 6% increase over the previous fiscal year's outlay), it exempted only mandatory state programs passed by the 1971 legislature from the limit; however, the mandatory shoreland legislation was passed in 1969 and made effective in 1972. Therefore, the counties have to provide a shoreland management program with an already limited budget and personnel resources.
- (2) Shoreland management is a mandatory state program administered by counties who receive no compensation for their services.
- (3) According to the Agricultural Extension Division at the University of Minnesota, the Shoreland and Zoning Enabling laws have to be clarified for the counties: conditional use permits are not standardized; the definition of variance is not consistent; the power to grant variances is not specifically allocated to a particular body such as the County Board of Adjustment; the regulatory and ordinance-making body is not required to be separated from the appeals body; and constraints on regulating private property have not been realized.

These problems have caused some counties to be reluctant in conforming to the state shoreland mandate. Fortunately, both the Association of

Minnesota Counties, a non-profit organization of the 87 Minnesota counties which lobbys, gathers information, and studies problems for the counties, and the Agricultural Extension Division, a multi-level governmental organization which is becoming an institutional advisor as well as an agricultural advisor, have been actively encouraging and aiding counties in the formulation of their ordinances.

DNR also receives daily phone inquiries from homeowners and contractors seeking information on lake classifications, rules and regulations, and whom to contact concerning specific county ordinances.

Perhaps an indirect benefit derived from the shoreland ordinance and permit procedure is that it has stimulated both individual and county governments to reevaluate land use trends in their communities. On the other hand, an indirect cost of administration at the county level is that it could encourage parochialism -- the economic and social well-being of a region could be neglected by each county seeking its own goals. Another externality of shoreland management is the regressive nature of the minimum lot size requirements. The larger the minimum lot size, the fewer the number of people who can afford the initial investment and the subsequent tax payments. In many counties, a backlash is developing and citizens are organizing themselves into groups such as CAUZ, Citizens Against Unnecessary Zoning.

Review Mechanisms

The primary review mechanism is that used in evaluating reclassification requests from the counties, whether initiated by the county itself or a citizen acting through the county board. When the Division receives a reclassification request, the Division reports that it requires further

data to prove that the original classification was inadequate and to demonstrate that the specific development requested was planned previously to shoreland control -- the development had to be included in the county's comprehensive plan.

PART IIIINTERVIEWS

DATE: July, 1972

NAME: Michael Hambrock and Dave Milles

TITLE: Shoreland Management, DNR

ADDRESS: Centennial Building
St. Paul, Minnesota

TELEPHONE: 296-2967

FUNCTION: Both administer the shoreland management program -- review ordinances and variances, etc.

SUMMARY:

-How do you evaluate county shoreland ordinances?

Use detailed evaluation sheet (check list); the ordinance has to comply with these criteria all the way, 1 copy enclosed; also check proposed administrative procedures.

-How many county plans have been adopted, extended, etc.?

47 adopted
16 writing resolutions
9 counties promised resolutions
14 extensions to May 1
1 no cooperation, Pennington

½ or less used model DNR ordinance

-Are these ordinances part of a comprehensive plan?

Yes, two interpretations of comprehensive plans -- either country-wide plan or just shoreland management plan

-How are economic concerns handled?

Usually they come up in requests for reclassification; economic motivation is behind 99% of reclassification requests; county has to prove that the economic development was planned previous to shoreland controls.

-Is shoreland management coordinated with water quality?

Not a great deal -- with the PCA they review and coordinate applications for any water quality variances; if any of the state agency's projects will affect water quality, they send a copy of the project to all divisions for comment; soon the bureau of planning in DNR will coordinate shoreland management and water quality.

-What mechanism is used to reclassify shoreland from, for example, recreational to development?

DNR will require further data to prove that the original classification was inadequate. However, there can be development in areas not classified as such due to a grandfather clause -- a lot platted, recorded, and sold previous to the ordinance can be developed. A county may attach conditions to the building permit.

-What type of control does DNR have over counties once their shoreland ordinance has been adopted and approved? For instance, what action could DNR take against a county which is granting too many variances?

1. All applications for variance are sent to DNR, if one looks questionable, DNR can call a hearing (10 day notice) to have it discussed though DNR has no overriding authority at this time.
2. Talk to county and convince them to change administrative procedures.
3. Find a citizen in the county to file a suit of mandamus against the responsible county official for nonconformance of job duties.

DNR has no direct legal force, just advisory capacity, however, will continue to monitor counties. Hambrock not sure whether DNR should have direct involvement in county affairs -- feels they are too removed from situation.

-What changes would you like to see made in the 1969 Shoreland Management Legislation (Chapter 777)?

Inclusion of municipalities. Dave Milles pointed out inequity of situation where two sets of controls can operate on the same lake.

-Do you have a formal liaison with Metropolitan Council, PCA and State Health Department?

1. The Metropolitan Council was consulted extensively during the classification procedures -- the classifications were viewed in light of their own development plans.
2. Not very involved with the PCA.
3. Trying to develop more cooperation and exchange of information with the state Health Department (use their standards as basis for shoreland regulations); not as well staffed as county health departments and cannot always do on-site inspection of facilities after initial approval on paper (responsible for hotels and resorts on shoreland).

-Mike doesn't feel sure that he has a total picture of water resources management -- feels this is indicative of something within DNR.

-Do you deal with Watershed Districts?

Yes, Watershed Districts see us about their proposed regulations (for example, the Rice Creek Watershed just did this). They usually incorporate DNR's shoreland standards by reference into their ordinance.

-After this, is there any continued formal communication?

Yes, the Water Resources Board which sets up watershed districts is located within DNR.

-What would you like changed about this set-up?

Perhaps there could be more consolidation.

-Where is the shoreland data bank?

At the University of Minnesota on tape in the 6600. DNR has all this information plus some original data (soil maps, forest types) on microfilms of computer print-outs.

RECOMMENDED FOLLOW UP:

Les Maki, Department of Administration, coordinates state water resources data systems.

DATE: July, 1972

NAME: Dave Bryden

ADDRESS: Fraser Hall
University of Minnesota
Minneapolis, Minnesota

TELEPHONE: 822-9713

FUNCTION: Law school professor, teaches course on legal aspects of shoreland management.

SUMMARY:

-Gave me extensive bibliography on legal aspects of shoreland management.

-Suggested using "carrot" rather than "stick" with county enforcement of shoreland ordinances. Carrot would be financial incentive. Wisconsin tried this but money was insufficient, program was discontinued.

DATE: July 18, 1972

NAME: Mentor C. Addicks, Jr.
TITLE: Staff Attorney, Association of Minnesota Counties
ADDRESS: 55 Sherburn, Suite 203
St. Paul, Minnesota
TELEPHONE: 222-5821

FUNCTION: Deals specifically with county shoreland management at AMC.

SUMMARY:

Two main problems with current legislation:

- (1) The Shoreland Management Legislation was adopted in 1969 with a 1972 deadline, the '71 legislature placed a levy expenditure limit on the counties (6% more than previous year's expenditures) and exempted any mandatory state programs of 1971, not for 1969. Therefore, the counties had to provide for shoreland management in limited budget.
- (2) It is a mandatory state program administered by the county. All the county receives is technical assistance from two staff people in DNR; no financial aid.

The Association is a lobbyist for the counties, an inquiry service, and provides general information in all areas of county planning. They pushed hard to encourage reluctant counties to adopt shoreland ordinances.

DATE: Thursday, July 27, 1972

NAME: R. W. Snyder

TITLE: Assoc. Professor, Dept. of Agriculture and Applied Economics,
and Land Extension Economist, Agricultural Extension Service

ADDRESS: 119 Temporary South of Coffee Hall
St. Paul Campus

TELEPHONE: 373-1093

FUNCTION: Snyder works with counties helping them develop shoreland zoning.

SUMMARY:

1. Counties have misunderstood the shoreland legislation, there has been grass roots level opposition, personality conflicts, and scores of rumors.

-in one county a group has organized, calling itself CAUZ --
Citizens Against Unnecessary Zoning.

-Olmstead County started the opposition, Pine and Wabasha have continued it.

-The extension division has to play a more educational role and are dealing with institutional arrangements and planning (outside of traditional Home Economic, youth and agricultural advising roles).

2. Problems with shoreland legislation:

(a) Not based on the Standard Zoning Enabling Act of 1926 (which should also be updated).

(b) Confusion caused by municipal law and county law with regard to handling of complaints from land owners seeking hardship variances.

-the County Zoning Enabling is unclear: it states that a county's Board of Adjustment can review upon appeal (of an administrative decision) but it does not specifically authorize it to grant variances. Since this is different than municipality authority, some consulting firms are confused and helping counties set up illegal procedures for expediting legal redress.

(c) There are 3 different methods being used to grant conditional use permits:

-the county Board of Adjustment issues the permit;

-the Planning Commission issues the permit;

-the Planning Commission gives recommendations to the Board, and the Board issues the permit --

they are called different names by different cities and villages and hinders communication about problems between all levels of government.

- (d) Should separate regulation making body from appeals body, or end-up defending regulations instead of hearing appeal.
3. The planning studies for the counties, which are usually funded by state and federal monies, do not have the type of information needed.
- need information that is not easily accessible before county can zone a lake into more than one district,
 - there has not been much investigation of non-conforming uses resulting from the ordinances.
4. Constraints on regulating private property -- current disregard of it with thrust of environmental problems.
See -- State of Maine v. R. B. Johnson.
- privately owned property cannot be regulated to the extent that it prohibits any alternatives for development in order to protect wildlife; since wildlife is a public resource, the private land should be dedicated to public use, and its owner compensated.
5. Social Aspects of Shoreland Zoning
- DNR's concerns are too narrow, i.e. just environmental, happens to most focused agencies
 - large lot sizes requirements discriminate against poor people
- (a) initial high cost,
 - (b) high taxes, esp. for a seasonal home,
 - (c) some may not need or use the entire lot -- utility questionable,
 - (d) creates sewage problem in that septic tanks are not very desirable, esp. after the soil's pores are plugged and when water table is high, can't use anyway -- need central collection system and with this type of system there is a linear cost function i.e. the more area between collection lines, the more the cost increases -- this increase costs even more and excludes the poor,
 - (e) Also economic development of areas could be affected if it limits the number of second homes and people in an area,
 - (f) shouldn't have to choose between rich and poor residents -- enough land for all,
 - (g) monitor system to see what happens.
6. Model Ordinance is poorly written:
- (a) the same terms have different meanings throughout,
 - (b) by putting in sanitary, subdivision and zoning regulations, people will not know what zoning is,
 - (c) conditional use permits is not clear.

DATE: Thursday, July 27, 1972

NAME: Eugene Karel

TITLE: State Planning, Task Force Chairman for Ad Hoc Lake Improvement Committee

ADDRESS: Capitol Square Building
St. Paul, Minnesota

TELEPHONE: 296-6592

SUMMARY:

1. The legislature in the last session appropriated monies for the purpose of demonstration projects for lake improvement.
2. They try to find a variety of programs and review them to determine the problems of lakes and the best methods to correct them.

-list of projects accompanying

3. Attempt to make recommendations to the legislature for an expanded program.
4. Members of committee from Center for Urban and Regional Affairs (CURA), House of Representatives, Minnesota Resources Council, Division of Waters, Soils, Minerals at DNR, Bureau of Planning at DNR, Department of Geography at University of Minnesota, Division of Technical Service at DNR, Office of Local and Urban Affairs, Limnological Research Center, Environmental Planning at State Planning, Department of Agriculture, Division of Environmental Health at Department of Health, and the Division of Water Quality at PCA.

Budget:

Fiscal Year 1970	1971	1972
6 projects	5 projects	3 projects
\$69,516.00	\$75,325.50	\$25,486.00

Total: \$170,327.50

5. Copies to all members and DNR, Limnology lab, and PCA. Primarily a technical program.

RECOMMENDED FOLLOW UP:

Citation for development of committee: Extra-Session Laws 1971, Chapter 3, Section 48, Subdivision 7, paragraph G.

Sent attached report indicating scope and funding of particular projects.

NATURAL RESOURCE FUNDING FOR LAKE IMPROVEMENTANOKA COUNTY

Crooked Lake - \$2,150.00 + \$6,840.00 = \$8,990.00

Study of ground water levels and movements for one year. Information to be used to evaluate feasibility of maintaining the level of Crooked Lake. Drill a six inch well to see if it is possible to use ground water to help maintain water level.

BECKER COUNTY

Cormorant Lake - \$12,960.00

Construction of a sanitary sewer system and waste treatment facilities for a number of lake homes and resorts.

CLAY COUNTY

Hawley Lake - \$17,250.00

Removal of silt, construction of a control weir to minimize future silting and installation of a fresh water supply to be used for flushing and dilution.

HENNEPIN COUNTY

Minneapolis Chain of Lakes - \$43,600.00

A two year program to determine nutrient budget level in the City's Chain of Lakes. The second year, the program will consist of artificially mixing the lake and not allowing it to stratify. Specific recommendations will be made at the end as to whether storm water should be treated before it enters the lake.

Shingle Creek Watershed Survey (Crystal) - \$18,250.00

A study to determine the profile and ground water contours of the Shingle Creek watershed. Data will be used to suggest various management plans to stabilize lake levels and provide continuous flows in the creeks.

JACKSON COUNTY

Heron Lake - Middle Des Moines Watershed District - \$5,550.00 + \$5,170.00 = \$10,720.00

A two year study to determine the type, extent and sources of pollutants into Heron Lake. The results to be used to recommend procedures to use to Control water quality and water flow into Heron Lake.

KANDIYOHI COUNTY

Eagle Lake - \$15,000.00

Siltation trap and impoundment (local unit has not been able to come up with it's share so project has not been started.)

RAMSEY COUNTY

White Bear Lake - \$25,000.00

A water quality study leading to steps to correct problems in lake.

STEARNS COUNTY

Horseshoe Lake - \$1,906.00 + \$2,085.50 + \$2,066.00 = \$6,057.50

Munson Township

Algae control by the use of copper sulphate over a five year period.

WATONWAN COUNTY

St. James Lake - \$12,500.00

Dredge the lake to remove silt in an area 1,000 x 4,000 feet.

DATE: Friday, July 28, 1972

NAME: Charles Snyder
TITLE: Section Chief of Hotels, Resorts, and Restaurants
ADDRESS: Department of Health
717 Delaware St. S. E.
Minneapolis, Minnesota
TELEPHONE: 378-1150

SUMMARY:

-Any licensed establishment must submit plans and specifications on any dwelling (shoreland or otherwise) pertaining to water supply, sewage disposal, and plumbing.

-Won't accept plans for review and approval until the county submits a copy of their County Shoreland Permit.

-Do not communicate with DNR in anyway.

-HR&R issues licenses for hotels, restaurants, resorts, places of refreshment, boarding houses, lodging houses, mobile home parks, tourist parks, and camping areas. Inspections are made to determine compliance with laws and regulations.

RESOURCES

Literature

Borchert, J. R., Orning, G. W., Minnesota's Lakeshore Resources, Development, Policy Needs, Part I and II, 1970.

This study includes a complete inventory of seasonal and permanent lakeshore homes, dominant shore-area soils, on and off-shore vegetation types, available lake ecology data, and road accessibility. In addition, the study also classifies Minnesota lakes into potential crowding class (water acres per mile of shoreline) and an evaluation of potential and existing shoreland policy problems.

Department of Natural Resources, "A Guide for Buying . . . Lakeshore." Good summary of legislation and problems when purchasing shoreland.

Department of Natural Resources, Shoreland Management, Supplementary Report No. 1, "Classification Scheme for Public Water," April 1971.

Department of Natural Resources, Shoreland Management, Supplementary Report No. 2, "Elements and Explanation of the Shoreland Rules and Regulations," August 1971.

University of Minnesota Agricultural Extension Service, "Shoreland Management Information for Community Leaders," Shoreline, Volume I, Number 3, (September 1971).

Legislation

Laws of Minnesota 1969, Chapter 777.
Shoreland Enabling Legislation.

Minnesota Statutes 1971, Sections 394.21 - 394.37
Enabling legislation for county zoning and planning.

Minnesota Statutes, Chapter 112, amended by Laws of 1971.
The Watershed Act.

Minnesota Statutes 105.42.
Work in the beds of public waters.

Minnesota Statutes 361.26, Subd. 2.
Surface Use laws.

Rules, Regulations

Department of Natural Resources, Statewide Standards and Criteria
for Management of Shoreland Areas of Minnesota, July 1, 1970.

DNR's rules and regulations on shoreland management; the
model ordinance is included.

Pollution Control Agency, Division of Solid Waste, Minnesota
Administrative Rules and Regulations, 1970.

CHAPTER IIIAIR QUALITYPART IINTRODUCTION

Atmospheric air is a vital resource which has only in recent times become recognized as finite and exhaustable. The remarkable regenerating and cleansing capabilities of the atmosphere have found their match in the polluting capabilities of a technical society. The economic desirability of increased production comes into conflict with societal goals when by-product pollution interferes with human health and welfare.

The effects of air pollution include interference with natural beauty, injury to plant and animal environments, and jeopardy to human life styles and health. In response to the threats of pollution, federal, state, and local governments have taken action to protect the quality of the air. Difficulties inhere in the control of air pollution; for examples, air movement is dynamic and pollution recognizes no jurisdictional boundaries, adequate methods for detection of certain pollutants have not been developed, and economics dictates that environmental clean-up can cost taxpayers money and/or jobs.

Environmental regulation typically involves difficult decisions with political trade-offs and uncertain ramifications. It is intended that this report should analyze the mechanisms found in Minnesota for making such decisions in the control of air quality.

SUMMARY AND EVALUATION

With limited exceptions, air quality control in Minnesota is exclusively the province of the Air Quality Division of the Minnesota Pollution Control Agency (PCA). The PCA organization involves a nine member decision-making board, an executive director, and a staff which helps the director carry out executive duties for the board.

The PCA board decides policy, adopts air quality standards, promulgates administrative rules for the staff, and establishes air pollution control (APC) regulations which are enforceable as law. These regulations are promulgated on the basis of scientific data and emissions inventories from locations throughout the state. Such feedback and control allows the PCA to maintain the national air quality standards of the Environmental Protection Agency (EPA) or optional, stricter state standards for the seven air quality regions in Minnesota. In its formulation of policy, the PCA board is statutorily directed to preserve the health and welfare of the citizens while simultaneously considering economic status or growth.

The great bulk of air emissions regulation is accomplished through a use and installation permit system. The APC regulations require specified information about emission types, effects, etc. for use in permit decisions. New industrial installations are required to submit environmental impact statements, although no specific format has been developed for such statements to date; the effectiveness of the impact statements could seemingly be improved if definite guidelines were established. The PCA Director has the statutory authority to require emission source self-monitoring with approved procedures and equipment. This type of monitoring can be

greatly beneficial in air quality control, but budgetary and technological constraints have retarded the PCA's progress. Indeed, a comprehensive program of self-monitoring could be advantageous.

The PCA has taken recent action to aid citizen participation and regional planning efforts in its decision making policy. Public hearings and requested recommendations regarding proposed emission sources are found in the Anti-degradation section of APC regulation 3.

The enabling statute of the PCA grants the agency various enforcement powers, including injunctions, emergency and abatement orders, and criminal misdemeanor sanctions. Variances, stipulations, and inspection powers are further enforcement tools. It would seem, however, that the PCA needs more legal "clout" to be truly effective. At present, the criminal misdemeanor carries a maximum penalty of only \$300 per day, and more importantly, the action must be maintained by prosecuting attorneys (municipal or county) who are not always interested or available. The agency needs a "ticketing" power for legal versatility. Most local pollution control agencies have more power in this respect than does PCA--local units can write tickets like traffic policemen.

Additional problems with PCA legal effectiveness exist. As a practical matter, injunctive powers of the PCA may be limited simply because judges are hesitant to order abatements, which entail total cessation of an industrial activity. A further, and perhaps most fundamental reform in PCA "clout" was before the legislature last session, only to be tabled in the House. Senate bill 572, authored by Senator Dosland et. al., would give the PCA civil law powers; penalties of up to \$10,000 per day would truly be more effective and accessible than present misdemeanor fines.

The Environmental Rights Act recently passed by the legislature is another legal tool available to the PCA. In most instances a PCA injunction has more efficacy, but the Act has tremendous value when the absolute defense of a valid permit thwarts injunctive action. The Act itself has particularly great value to private citizens; indeed, the Minnesota legislature was recently commended by the President's Council on Environmental Quality for its contribution to effective pollution control.

The Pollution Control Agency necessarily interacts with agencies in various governmental strata. EPA has both legal and economic influence or control over the PCA through its funding and mandatory review of the air quality control Implementation Plan. PCA shares responsibility with the neighboring states of North Dakota and Wisconsin for the quality of air in three interstate federal air quality regions. Within the state itself, PCA has the total responsibility for air quality, although many functions of control are delegated to smaller governmental units, such as towns and counties. Additionally, support facilities and cooperation from the Attorney General's Office and Department of Health are invaluable to PCA activities.

It should be noted that EPA has recently shifted its policy from emphasis on local governmental air quality controls to support of multi-county or regional programs. This shift has become incorporated into federal funding schemes; the local-type agencies have little or no expectations for future funds, while the regional efforts are eligible for the 3-to-1 matched funding given to states. There has been a favorable response among the potentially affected Twin Cities area agencies to future

reorganization into a seven-county regional agency, but the PCA has remained ambivalent to the idea. Some members of the PCA board apparently express concern over the possibility of function and power usurpation by the metro area and possible duplication of efforts with the PCA. Serious thought should be given to the idea of reorganization along multi-county or regional lines, for the prospects of federal funding would certainly provide tempting rationale. Although the Metro Council is a planning and coordinating body, perhaps it could be utilized as the parent organization for a legislatively created air pollution control board analagous to the existing Metro Sewer Board, or alternatively, a metropolitan division of PCA.

Various interest groups representing environmental and economic interests exert pressures on the PCA. Board meetings and hearings are always open to the public. Records and reports also are available for public scrutiny. Political pressure on the governor and legislature in reappointment of the PCA board, and the visibility and persuasiveness of interest group advocacy insure careful deliberation in formation of agency policy. The legislative design of the PCA includes many avenues for citizen input, but the decisions of the board regarding APC regulations are final. Permit decisions, on the other hand, are reviewable through the district court system of the State of Minnesota.

PART IIPOLLUTION CONTROL AGENCYSource and Scope of Authority

Created by the state legislature in 1967 (Chapter 116, Laws of Minnesota), the Pollution Control Agency (PCA) is an executive agency consisting of nine board members appointed by the governor and approved with the advice and consent of the Minnesota Senate. Board members have staggered terms of four years. The enabling statute specifies that one of the members must represent agricultural interests, otherwise, membership must merely be "broadly representative of the skills and experience necessary to effectuate" legislative pollution control policy. (see Section 116.02, Laws of Minnesota).

According to Section 116.07 of Minnesota Laws, the PCA board has the responsibility and power to adopt air standards for air quality regions within the state, to promulgate administrative rules for its staff, to establish pollution control regulations having the force of law, and to grant variances and permits.

The Director, or Executive Secretary, of the PCA is charged by Section 116.03 and 116.04 of Minnesota Laws with the responsibility for execution of the decisions and regulations of the PCA board. The Director serves at the pleasure of the governor and has the responsibilities of engaging a staff, entering into contracts, and acting as state agent for receipt and disbursement of federal funds.

The PCA staff has been separated into four subdivisions: Air Quality, Water Quality, Solid Waste, and Special Services (An organizational

diagram is found in the appendix of this report). With limited exceptions, ambient air quality control in Minnesota is exclusively the province of the Air Quality Division of Minnesota's PCA.

Funding

The PCA is financed through legislative appropriations and funds from the federal Environmental Protection Agency (EPA).

The 1972 state air quality appropriation of \$147,000 was \$71,000 higher than that of the base period (fiscal year 1970) when the state was allotted \$76,000 for air quality control. The \$71,000 difference in appropriations was matchable by EPA funds in the ratio of three-to-one, so that in fiscal year 1972 (July 1, 1971 to June 30, 1972) the air quality program received the maximum allowable matched fund grant of \$214,000 from federal sources. The total operating budget of the air quality division was the sum of state and federal funds, or \$361,000. In addition, EPA provides grants for some equipment and assumes the entire salary costs of federally assigned employees working for the PCA.

According to both PCA staff and outsiders, the air quality budget is insufficient to support the necessary staff manpower, facilities, and monitoring equipment.

Rules, Regulations, and Policies

The federal government has preemptive authority in certain areas of air quality control. National ambient air standards have been promulgated by EPA for each six defined pollutants: sulfur dioxide, particulates, carbon monoxide, nitrogen oxides, hydrocarbons, and photochemical oxidants. The United States has been divided into air quality

regions. Seven such regions exist in Minnesota, four of which are totally intrastate. EPA has defined three separate standards, called priorities, for each pollutant. Each region has subsequently been assigned pollutant priorities on the basis of its industrialization, population density and distribution, air mixing characteristics, and related factors. National air standards have been established at levels theoretically sufficient to protect human health, prevent nuisance, and protect biota.

State adoption of stricter standards would seemingly be desirable, but decisions are somewhat constrained by considerations of economic status or growth. Such constraints are explicitly mentioned in Section 116.07(6) of the PCA enabling legislation.

The air pollution control (APC) regulations prescribed by the PCA are legally enforceable within the state, and binding upon all air quality control units operating in Minnesota. In its establishment of ambient air quality standards, Minnesota has used "primary" and "secondary" standards as defined by APC (1) (a): the "primary" standards are "levels of pollutants above which, on the basis of present knowledge, health hazards or impairment may be produced," and the stricter "secondary" standards represent "levels which are desirable to protect the public welfare from any known or anticipated adverse effects. . . ." For almost all pollutants, the PCA has adopted the more stringent secondary standards. Section 116.07(2) of the enabling statute specifies that no local governmental unit may set standards more stringent than PCA's. The overwhelming practice of local units to adopt APC standards by reference has resulted in the uniformity of regulation necessary for the control of air quality.

The long range policy of the PCA is required by the enabling statute (section 116.10, Minnesota Laws) and is to be submitted each biennium to the legislature. The policy plan of the Air Quality Division is embodied in the Implementation Plan manual prepared pursuant to federal requirements of EPA.

Function

The combination of legally enforceable regulations and continuous air quality monitoring comprises a long-range closed-loop feedback system utilized by the PCA. APC regulations (sixteen to date) describe the legally allowable emissions, construction requirements, noise levels, etc., and represent the law as promulgated by the PCA. These regulations act as an input to the pollution control loop. The output is the quality of the ambient air, which is monitored by a statewide system. The monitoring facility of the PCA is among the most advanced in the country and provides continuous information at a data acquisition center. Further information is received through an Emissions Inventory of all stationary and mobile (area only) sources, which is a questionnaire input of fuel uses, plant processes, etc. of all pollution sources in the region. The collected data provides the feedback upon which new or revised regulations are based. Although the feedback is constant and current, the PCA board will typically leave regulations unchanged for one or two years. The large lapse of time between feedback and control is necessary to promote stability of the regulations and to preclude unreasonable regulations based on fluctuating data. In order to preserve air quality on a short term basis, the PCA has a statutory mandate to confront an emergency air quality "episode" with immediate abatements; no notice or

prior hearing is necessary for the exercise of this power.

The PCA enforcement operations involve numerous methods for discovery of pollution violations: PCA knowledge of obvious, potential or chronic violators, citizen complaints, or information from the Emissions Inventories. Regardless of the catalyst for action, engineers are dispatched to the emission source in question, inspect the facility, and request a report on the emissions discharged. The report must be prepared by a consultant or neutral third party; if the facility is found to be outside APC regulations, correctional plans must be drawn up by either the polluter or his consultant. The PCA itself cannot make such proposals. In most instances, a stipulation (contractual agreement for prescribed compliance with regulations) is granted along with a reasonable time for compliance.

The enforcement scheme of the PCA relies heavily upon a system of permits, described in APC(3)(a). Those people in control of existing emission sources must have a valid permit for operation of their facilities. Criteria for issuance of such permits are specified and include considerations of types and amounts of emissions, dispersion characteristics, and other information for assessment of possible effects of effluents. In a similar manner, installation permits are required before any new emission sources may be constructed. The PCA requires an environmental impact statement prior to granting of such permits, but at the present time there is no developed format for the impact statements. Any rejection of a permit application does not prejudice the applicant's right to a hearing before the PCA board or for submission of a revised application.

APC(3)(6) provides that the Director of the PCA may require self-monitoring of emission sources if other measurement methods prove ineffective. Such self-monitoring equipment must be approved before the facility can obtain an operating permit. Apparently the state of the art and budget of PCA do not permit such monitoring on a large scale at the present time, but it is hoped that self-monitoring will become an important tool in future air quality control.

The recently adopted anti-degradation regulation of APC(3)(d) is valuable for its inputs to environmental decision-making and its contributions to regional planning efforts. This regulation speaks to proposed major emission sources, those producing more than one hundred tons per year of combined pollutants. By way of comparison, this amount of pollution would be typical in a small industrial boiler; the Northern States Power Black Dog electrical generating plant exhausts about 240 tons of one single pollutant, sulfur dioxide, every day. Regulation APC(3)(d) provides that prior to the granting of an installation permit public hearings must be held concerning location and construction. Such hearings insure the presence of citizen input in permit issuance decisions. At the same time, APC(3)(d) requests that the appropriate regional commission in the state and the State Planning Agency make recommendations regarding the site locations for the proposed facilities, particularly how the siting fits the developmental plans for the region. Metro Council and the Arrowhead Regional Development Commission are presently in existence and involved with recommendations. When the Metro Council completes its Air Quality Guide as a formal planning statement, it is expected that the Guide's policy will be firm enough to make a negative recommendation tantamount to a veto power.

A variety of legal powers are vested in the PCA by section 116.08, Minnesota Laws. The APC regulations, as mentioned above, enjoy the force of law and are actionable with criminal penalties and/or injunctive powers. Violation of any provision of the enabling statute or the APC's is punishable criminally as a misdemeanor (maximum fine of \$300); each day of violation constitutes a separate offense. The PCA has the injunctive powers of specific performance (the polluter can be forced to carry out his contractual obligations to comply) and abatement (the polluter can be forced to cease his operations). Additionally, section 116.11 of the enabling statute authorizes emergency orders of abatement, without notice and without a hearing, if there exists "imminent danger to the health and welfare of the people of the state." Such "emergency episodes" are infrequent, but well defined procedures exist for their implementation if the necessity arises. The PCA board has the statutory (section 116.07(5)) authorization to grant variances, or individual exceptions, from the standards and regulations in order to avoid "undue hardship" and to "promote effective and reasonable application" of the laws. Generally speaking, the board issues such variances only temporarily as in a stipulation, or in extenuating circumstances. Stipulations, mentioned above, are a contractual agreement between polluter and PCA for compliance with APC regulations within a prescribed time period. If the polluter fails to comply on time, his breach is actionable in the state courts. The stipulation therefore permits the polluter to maintain his operations while he improves the quality of his emissions.

Information Systems

The PCA enjoys a modern data acquisition system for use in its continuous air quality monitoring activities. A computer receives and processes data from the network of monitoring sites throughout the state (see appendix for locations). The resulting data bank provides current air quality information helpful in detecting emergency "episodes," violations, and in making relatively long-term policy choices.

Intergovernmental Relations

It has already been noted that EPA is responsible for the bulk of the PCA funding and necessarily has great influence regarding the state operations. EPA sets the primary and secondary standards, provides studies, criteria documents, expertise, etc. In response to Section 110 of the Clean Air Act, 42 U.S.C.A. Section 1857 et. seq. each state must adopt an implementation plan for air quality control. The plan itself is a comprehensive strategy for control of pollution; once EPA approves, the task of the state is defined. EPA reserves the right to enter the state and assume the pollution control burden if state efforts are unsatisfactory, but as a practical matter, intervention would be unlikely.

Three of Minnesota's Air Quality Control Regions are interstate. The PCA shares responsibility with Wisconsin's Department of Natural Resources for Region 129 (Duluth and Superior) and Region 128 (Southeast Minnesota and LaCrosse). The two states share air quality data, emissions data, and engage in continuous communication during emergency "episodes." Air Quality Region 130 in the Fargo-Moorhead region involves similar cooperation between PCA and the North Dakota Department of Health.

Within the state, PCA has statutory responsibility for all air quality control. The enabling statute of the PCA allows for contractual delegation of administrative authority to local governmental units. Throughout the state, various municipalities, counties, and industries have established pollution control programs which cooperate with the PCA. In practice, all of the local units and the PCA enjoy good working relations although in most instances the formal contractual agreements required by statute are non-existent. The majority of these local agencies pre-dated the PCA and have merely shared tasks with it now. Local control is valued by the small units and furthermore liked by the understaffed PCA; limited manpower resources may be spread to otherwise neglected areas of the state.

St. Paul, St. Louis Park, Bloomington, Richfield and Minneapolis all have their own pollution control programs. Minneapolis and St. Paul work closely with PCA in monitoring data, compilation of Emissions Inventory data, and enforcement. Federal funds to Minneapolis ceased after fiscal year 1971, although St. Paul and St. Louis Park still receive matched money from EPA. The PCA is empowered to oversee any local effort as long as federal funds are received there; the other locally supported agencies have a greater degree of autonomy from EPA and hence, from PCA.

In addition to the cities, Anoka, Olmstead and St. Louis counties have implemented local air quality control programs with powers and authorities delegated by the PCA. Industries, such as Northern States Power Co., also have research and implementation programs for control of stationary-source pollution.

A prime advantage enjoyed by the local governmental agencies is a "ticketing" power unavailable to PCA. Local ordinances have adopted by reference the state code and regulations of the PCA, and the resulting permit and "tagging" powers eliminate lengthy legal procedures.

PCA's Air Quality Division has cooperative relations with other state agencies. Analytical Services, library facilities, and some administrative services are received under contract with the Minnesota State Department of Health. The legal staff of the PCA is supplied by assignees from the office of the Minnesota Attorney General.

In the outstate areas, monitoring and maintenance functions are performed by volunteers and local health department employees in addition to the employees of local air pollution control agencies.

Clientele

Various interest groups in the state exert pressure on the PCA through correspondence and appearances at PCA board meetings and hearings. MECCA, MPIRG, Sierra Club, Isaak Walton League, Metro Clean Air Council, Clean Air-Clean Water, Minnesota Environmental Defense Council, Citizen's League, etc., assume pro-environmental postures on issues, whereas the Minnesota Association of Commerce and Industry and similar groups advocate economic growth and development. Such highly visible and vocal groups obviously exert political pressures on the PCA board and thereby influence board decisions.

Pollution control programs have both long-term and far-reaching influences. The entire population of the state and surrounding areas are affected by air quality policy, but most directly affected are those

existing and potential enterprises which are directly regulated. Public utilities are the most common objects of PCA regulation, followed by private industry, transportation sources, municipalities, and public facilities such as the University of Minnesota.

Review Mechanisms

The federal government maintains a strong influence in the planning decisions of the PCA through its review of the state's air quality control Implementation Plan. Approval of the PCA's plan is contingent upon state adoption of EPA's required legal authority and compliance with policy criteria. Minnesota is bound to maintain the legal authority to establish emission standards, enforcement, emergency, and abatement powers, and a statewide monitoring system, including monitoring of private emissions. EPA evaluation criteria involve an assessment of regulation effectiveness in preserving health and welfare and in preventing conditions of danger to health and welfare.

The PCA policy as determined by the agency board is subject to persuasive inputs by concerned citizens; board hearings and meetings are by statute (Section 116.075, Minnesota Laws) open to the public. Additionally, all records, reports, orders, etc. must be made available for public scrutiny. PCA board members and the director are connected to the highly visible governor's office through appointment and must also be approved by the senate; political pressures insure a distribution of interests and philosophies and simultaneously encourage receptiveness to reasonable citizen input.

LEGISLATIVE REFERENCE LIBRARY
STATE OF MINNESOTA

The permit system of the PCA is administered by the PCA staff under the auspices of the director. Public hearings and regional commission planning recommendations are prerequisites for industrial permits, whereas small emissions sources do not require such inputs. Permit decisions are always appealable to the PCA board; hearings can be initiated by a complaining party. All nine of the board members are needed to make agency decisions, but hearings themselves can be conducted with less than the full board. As a final check on permit decisions, the state court system may be used to review the agency ruling.

An additional avenue of citizen input regarding air quality control has been made available with the 1971 passage of the Minnesota Environmental Rights Law (Chapter 116B, Laws of Minnesota). This law enables any citizen to sue in a civil action for declaratory or equitable relief for protection of the environment. Furthermore, the law shifts the burden of proof to the alleged polluter. Such a measure lowers the legal barrier to private citizens and greatly amplifies the individual's impact in the environmental regulation process.

PART IIIINTERVIEWS

DATE: 29 June 1972

NAME: Dr. John Olin

TITLE: Section Chief of Technical Services

ADDRESS: PCA

TELEPHONE: 378-1320

(1) how are standards made?

- (1) protect health, especially respiratory
- (2) prevent nuisance (obnoxious)
- (3) protect biota

works closely w/EPA (money, studies, criteria documents, expertise, etc.)

(2) projection: decrease in pollution ahead; so far only holding our own.

(3) outstate: 60-70 stations monitoring

all data is telemetered

(4) in city: 4 major ones

to the Department of Health Building

(5) problem: hard to measure pollutants

(6) procedure: monitor, pass regulations--air pollution control strategy feedback system

(7) deficiency: manpower
public info

(8) strictly ambient; otherwise Department of Health

- (1) tells how strategy works
- (2) detects emergencies
- (3) public information

(7) Standards: Primary: to protect human health
Secondary: to protect welfare considerations and plants
(these are more stringent)

Need to at least meet primary--better if secondary

(8) Emissions Inventory of all sources

- (1) stationary (2) mobile-look @ area source
- put on grid--computer
- determine air quality

-standards are known, so combined with use program--prediction of standards.
 -PCA board passes on these--regulations

- (9) autos: 97% of CO -- way over standards.
 may require annual inspections.
 Federal government is pre-emptive in emissions of autos.
- (10) regulations revised every 1 or 2 years.
- (11) Control procedures

-- complaint -- inspectors (engineers); go thru plant, request report on emissions. Plant hears consultant and submits schedule for compliance w/regs. Consultant designs system -- PCA for approval.

Stipulation: contract that plant will comply, approximately 2 years to comply

If not comply: prosecute or give
 variance if necessary

Prob: judges let people off hook too easily

- (12) 7 air quality areas.
 -priorities classified w/region by pollutant.
- (13) need: (1) ticketing power
 (2) more teeth
 (3) manpower: only 22 people in air quality but great monitoring systems.

RECOMMENDED FOLLOW UP: Xerox parts of PCA Implementation Plan to Achieve National Ambient Air Quality Standards. October 1971

DATE: 7 August 1972

NAME: Dr. John Olin
TITLE: Section Chief, Technical Services, Air Quality Division, PCA
ADDRESS: 717 Delaware St. S. E.
Minneapolis, Minnesota 55440
TELEPHONE: 378-1320

FUNCTION: In charge of monitoring activities of air quality.

SUMMARY:

- (1) outstate monitoring: PCA owns the equipment but work is done by volunteer help.
- (2) outstate enforcement done by local agencies if possible, and otherwise by PCA.
- (3) clientele: industry, utilities, transportation sources, municipalities, public buildings such as University of Minnesota.
- (4) Executive Director may require self-monitoring by polluters themselves if equipment approved; but the state of the art is not advanced to the extent necessary for such.

COMMENTS: (none)

RECOMMENDED FOLLOW UP: (none)

DATE: 7 August 1972

NAME: Tibor Kosa
TITLE: Section Chief of Engineering and Enforcement, PCA Air Quality
Division
ADDRESS: 717 Delaware St. S.E.
Minneapolis, Minnesota 55440
TELEPHONE: 378-1320
FUNCTION: In charge of enforcing the air pollution control (APC) regulations
of the PCA.

SUMMARY:

- (1) permits function to bring industry into compliance
- (2) enforcement: three means of finding violators
 - citizen complaint
 - PCA past knowledge
 - Emissions Inventory: complete inventory of pollution sources
- (3) meetings between violator and PCA: draw up compliance plan or else get consultant; PCA can't itself make proposals.
- (4) for permit issuance on new installations the applicant must submit environmental impact statement. At present, no form has been devised--need some criteria.
- (5) APC (3)(d): Anti-degradation
 - public hearings are required for any installation with expected stack effluent of over 100 tons per year. This is very little, like a small boiler's effluent. As a result, too much time is spent on public hearings. Comparison: Blackdog plant puts out about 240 tons of one single pollutant SO₂ per day. Federal government requires only a single pollutant for the 100 tons/day, but Minnesota chose to use 100 tons per day for combined pollutants.
- (6) Kosa says the air division of PCA is badly understaffed.

DATE: 4 August 1972

NAME: Lyle Smith

TITLE: Assistant Executive Director, PCA

ADDRESS: 717 Delaware St. S.E.
Minneapolis, Minnesota 55440

TELEPHONE: 378-1320

FUNCTION: Administration of Agency

SUMMARY:

- (1) names of PCA Board Members
- chairman: Homer C. Luick--retired Vice President of Northwestern National Bank; active in wildlife federation.
 - vice chairman: Harold Field, Jr.--Minneapolis attorney active in citizen's league.
 - Dr. Harold Andersen--former chairman; specialist in respiratory diseases at Mayo Clinic; was member of former governor Rolvaag's air quality commission.
 - Milton Fellows--represents agricultural interests required by statute; farmer and feedlot operator.
 - Steven Gadler--St. Paul; electrical engineer and retired Air Force colonel. (very strong environmentalist)
 - Mace Harris--retired Vice President of Northwest Paper Co. in Cloquet.
 - Dr. Dale Olsen--Ph.D. in Political Science and professor at University of Minnesota, Duluth.
 - Robert Tucker--Vice President of Legal Affairs at 3M (recently appointed by Governor Wendell Anderson).
 - Mrs. Marion Watson--program director of KUOM radio (University station).
- (2) general attitude or position of PCA board: "firm but fair;" industrial, conservation, agricultural, etc.--wide spectrum of interests.
- (3) interests and pressure groups operating on PCA: MECCA, MPIRG, Sierra Club, Isaak Walton League, Metro Clean Air Council, Clean Air - Clean Water, Minnesota Environmental Defense Council, Minnesota Association of Commerce and Industry, League of Women Voters.

- (4) Public hearings are held for Implementation Plan; twin cities, Moorhead, Duluth, were sites for hearings.
- (5) All of the board members needn't be present to conduct a board hearing; transcripts may be used for information to absentees.

COMMENTS: (none)

RECOMMENDED FOLLOW UP: (none)

DATE: 7 August 1972

NAME: Richard Anderson
TITLE: Accountant, PCA
ADDRESS: 717 Delaware St. S. E.
Minneapolis, Minnesota 55440
TELEPHONE: 378-1320
FUNCTION: general accounting for PCA.

SUMMARY:

budget figures (rounded off) for PCA.

--fiscal year 1972 (July 1, 1971 to June 30, 1972):

- \$76,000 base (amount spent in 1970)
- \$214,000 maximum EPA grant, which is 3-for-1 matched fund
- \$71,000 to get maximum grant
- state spent \$71,000 plus \$76,000 for grant eligibility, or \$147,000.
- total + \$147,000 plus \$214,000 or \$361,000.

DATE: 10 July 1972
NAME: Gary Eckhardt
TITLE: Technical Services, PCA
ADDRESS: 717 Delaware St. S.E.
Minneapolis, Minnesota 55440
TELEPHONE: 378-1320

A) Survey of agency cooperation--PCA and local.

- (1) all agencies must use state regulations.
- (2) PCA: gives equipment to local units, but staffs are locally funded.
- (3) EPA wants coordinated effort; some PCA board members want more strength in state, others local.
- (4) Implementation plan--forced
EPA can move in if state doesn't follow.
- (5) matched money: 3 year programs--EPA looks to larger, regional groups.
- (6) need for manpower
- (7) great interagency cooperation.

DATE: 17 July 1972
NAME: Gary Eckhardt
TITLE: Technical Services, PCA
ADDRESS: PCA
TELEPHONE: 378-1320

B) Enforcement

- (1) PCA inspections: only on complaint or prior to permits
(case by case)--(need periodic in future)
- (2) Emissions Inventory: questionnaires for all sources known
(probably know 80% - 90%) finds out amount of fuel, process
used, etc.
-one problem: process information may be confidential.
- (3) auto emissions policy--leave to Fed.
otherwise: restrict parking (doesn't like periodic inspections).
- (4) 7 county regional plan: duplication is one PCA board excuse.

DATE: 10 July 1972

NAME: F. Martin Osborn

TITLE: Engineering and Enforcement Person: Federal Assignee.

ADDRESS: 717 Delaware St. S.E.
Minneapolis, Minnesota 55440

TELEPHONE: 378-1320

SUMMARY:

- PCA gets: -3 for 1 matched funds from EPA
 - grants for equipment
 - some assignees paid by EPA (2 now)
- Mpls. gets no federal funds.
- St. Paul does as of yet.
- try to better EPA guidelines, but economic status and growth considerations.
- PCA board acts on staff inputs.
- good citizen input: board meetings open.
- planning tool: permits, regulations, monitoring.
- major source of pollution: 100 tons per year.
- ambient standards: beyond property line.

DATE: 11 July 1972

NAME: Bob Lindall

TITLE: Legal Department PCA (Special Assistant of Attorney General)

ADDRESS: PCA

TELEPHONE: 378-1320

FUNCTION: PCA Attorney supplied by Attorney General's Office.

SUMMARY: Powers of PCA

- (1) injunctive-problem: companies have a million excuses for non-compliance.
- (2) criminal penalties: misdemeanor, has maximum of \$300/day and/or 90 days. (time spent by corp. official).

- (3) no civil penalties yet -- see S. F. 572 (Dosland Bill) (up to \$10,000/day)
- (4) stipulations: compliance schedules
- (5) emergency episodes
- (6) permits
- (7) problem with the PCA "clout": ticketing requires going to local prosecuting attorney (county attorney)
-they aren't usually interested.

local agencies have more effect because they have ticketing power.

DATE: 29 June 1972

NAME: Jonathan Morgan, Geoffrey Jarpe, Robert Lindall
TITLE: Assistant Attorneys General
ADDRESS: PCA, 717 Delaware St. S.E.
Minneapolis, Minnesota 55440
TELEPHONE: 378-1320
FUNCTION: Legal authorities for PCA

SUMMARY:

- Last session S-572: civil powers (not passed)
- usually mandatory injunction requested
 - if stipulation can be enforced but time is question.
 - temporary restraining order is best: usually need to be noxious though.
- only 5 cases tried so far under Environmental Rights Act.
PCA's powers are better, except permit is absolute defense.

DATE: 4 August 1972
NAME: Ray Thron
TITLE: Environmental Planning
ADDRESS: Metro Council, 3 Floor, Metro Square Building, St. Paul
TELEPHONE: 227-9421
FUNCTION: Environmental Planner

SUMMARY:

- (1) Metro Council's attitude toward regional air quality control in the metro area:
 - Metro Council is not an enforcement agency; merely a planning and coordinating body.
 - proposals have been made to make an air quality board an operative of M.C. Three choices have been offered:
 - (a) a separate agency--Thron sees this as just another agency with little or no change from the present scheme.
 - (b) metropolitan division of PCA--Thron says this would be undesirable; there would be trouble getting federal funds, PCA has enforcement problems at present and would be merely another agency.
 - (c) legislatively-created board, analagous to Metro-Sewer board, which would be under the control of M.C. This could be like a waste management board, combining air, liquid, and solid waste.
- (2) EPA does not favor local (city and county) types of air quality control, and funding on regional level is most desirable.
- (3) Thron foresees the legislature going toward a metro division of PCA even though he himself would favor a sewer-board type authority.
- (4) League of Municipalities and other groups oppose regional operation of air quality program; they cite lack of legislative intent in that direction and wish to retain the authority in themselves.
- (5) Metro Council's long range goals and objectives:
 - future establishment of air quality guide (not like PCA type of technical implementation plan), which spells out policy regarding land use, transportation, industrial development, etc., in region while still maintaining air standards.

-this is to coincide with PCA's APC (3)(d) (Anti-degradation), which requires recommendations from the regional commissions before issuance of installation permits. After the Guide is developed, this will hopefully become tantamount to a veto power.

DATE: 12 July 1972

NAME: Robert Lines
 TITLE: Minneapolis P.C.A.
 ADDRESS: 220 Grain Exchange, 400 S. 4 Street, Mpls. 55415
 TELEPHONE: 348-2637
 FUNCTION: Director

SUMMARY: Minneapolis Efforts:

- (1) no formal contract with PCA
- (2) helps with Emission Inventories, Monitoring, etc.
- (3) no longer get EPA funds -- stopped after 1971
 EPA has had programs to build up local participation;
 offered funds for increases in local moneys.. (2 for 1)
- (4) higher step, when good agency and effective enforcement
 with goals and formalities: maintenance grant: 1 for 1
- (5) strongly worked for regional effort
 -all 7 counties interested, but politics prevent interest on
 part of Metro Council.
 -also: PCA board: couple members don't like idea of
 duplication and power loss.
 -EPA gives 3 for 1 funds to regions as well as states (stresses
 regional efforts) (local have only been 2 for 1)
- (6) St. Louis
 Anoka County: authority of their own--by delegation
 Olmstead of PCA (any county can, after Bill passed
 last time)
- (7) Mpls: before PCA chronologically.
- (8) Powers: (1) tickets: quicker than injunctions or complaint
 route.
 (2) injunctive
 (use city attorneys; good cooperation)

DATE: 12 July 1972

NAME: William Cockriel
TITLE: Acting Director, St. Paul PCA
ADDRESS: 100 E. 10 St., St. Paul, 55101
TELEPHONE: 223-5521
FUNCTION: Administrative Director

SUMMARY: St. Paul's efforts:

- (1) still get federal funds (40¢ per dollar)
- (2) city government has "ticketing" power
- (3) Authority: State code by reference
- (4) cooperation with PCA
 - a) it's good
 - b) not in writing--merely in implementation plan: implied authority.
- (5) Maintenance grant--haven't gotten yet.
- (6) St. Paul--oldest agency in state.

DATE: 12 July 1972

NAME: Mr. Larson
TITLE: Bloomington Air Pollution Program
ADDRESS: 2215 W. Old Shakopee Road 55431
TELEPHONE: 881-5811
FUNCTION: Director

SUMMARY:

- (1) Bloomington has autonomy because no federal funds, so PCA doesn't have to control or oversee.
- (2) Cooperates with PCA; sampling and analysis.
- (3) City Ordinance: can issue permits
- (4) City Ordinance: can issue "tags"
- (5) Regulations adopted by reference from state code.

- (6) no more federal funds for municipalities
 - rather for counties or multi-county regions (2 for 1)
 - or regions (3 for 1)

RECOMMENDED FOLLOW UP:

Contact James Shipman at Inter-County Council--big planner for regional air control program.

RESOURCESLiterature

Minnesota Pollution Control Agency, Implementation Plan to Achieve National Air Quality Standards, 1971.

Legislation

Laws of Minnesota, 1971, Chapter 116, Pollution Control Agency.

Laws of Minnesota, 1971, Chapter 116B, Minnesota Environmental Rights Law.

Rules, Regulations

Minnesota State Regulations, Air Pollution Control Rules, Regulations, and Air Quality Standards, Minnesota Pollution Control Agency, Air Quality Division, September 1971, and amended February, 1972. (These are the Air Pollution Control (APC) regulations of the PCA).

CHAPTER IVSOLID WASTE MANAGEMENTPART IINTRODUCTION

Minnesota has recognized that solid waste is a governmental responsibility and is attempting to develop a comprehensive management system to resolve present and future problems. The state is particularly concerned about the following areas: 1) contamination of ground and surface water; 2) improvement of air quality -- both smell and appearance; 3) visual and noise pollution; 4) provision of disposal sites for future necessities; 5) evaluation of alternatives to disposal of solid waste.

Past experience has shown that although private enterprise can provide disposal sites, governmental initiative is necessary to coordinate all aspects of solid waste from collection to disposal, and to guarantee minimal pollution, which can cause increased costs. The state also recognizes that the private market alone will not provide incentives for reuse and recycling.

SUMMARY AND EVALUATION

The Minnesota Legislature authorized the Minnesota Pollution Control Agency to become responsible for all aspects of solid waste management in 1969. The MPCA has adopted regulations which cover all aspects of solid waste disposal, livestock and poultry feedlots, and abandoned autos. The activities of the agency has focused in four areas:

- a. Approval and permit issuance to all disposal sites within the state; this is substantially complete and the PCA will now focus on enforcement of daily operating regulations. Those sites which still do not have permits are being issued legal stipulative agreements.
- b. Registration of livestock and poultry feedlots with the intention of planning a time schedule for construction of pollution control devices on those feedlots not now in compliance with regulations.
- c. Inventory of all abandoned autos, and setting up regional collection centers to facilitate recovery and reuse of the scrap metal.
- d. Evaluation and approval of county solid waste management system plans; so far only 15 of the counties have submitted plans, and the agency is resorting to legal stipulative agreements to obtain compliance.

Under present statutes and regulations, the Pollution Control Agency has sufficient authority to control pollution and provide for future needs in the area of solid waste disposal. However, some changes would enhance the agency's ability to enforce compliance with the regulations and provide long term policies.

1. Since the policy of the Solid Waste Division will be to rely on counties for daily surveillance and enforcement of feedlots and disposal sites, it is imperative that all counties present final plans for approval. To achieve this, state funds should be made available, since the counties seem reluctant to utilize

their taxing authority. Also, the MPCA should be given authority to prepare and implement a county plan if a county has not done so by July 1, 1974.

2. Registration of livestock and poultry feedlots should be completed within a year and an assessment made of the need for pollution control devices, with a timetable for compliance of 5 years (estimates by PCA staff are that 10,000 out of 19,000 feedlots will probably need control devices; last year only 73 were constructed).
3. Authorization should be made by the state legislature to provide funds in those cases where construction of pollution control devices for feedlots would cause undue hardship, even with the federal funds available.
4. In order to carry out the above programs, the Solid Waste Division should be authorized to hire more staff, especially if the counties do not take an active part in surveillance of landfill disposal sites.
5. Regional commissions should be utilized where available to provide planning for solid waste management, especially for those areas where low density population makes landfill sites uneconomical. The PCA regions should be changed to comply with the boundaries used by the State Planning Agency.
6. The monies now dedicated for collecting and reusing abandoned motor vehicles should be released, preferably to be used by the agency where it wishes, or at least to provide funds for studies on recycling and reuse of all solid waste materials. Last year, over \$650,000 was returned to the general fund of

the state, while the recycling study in the Special Services Division received minimal funds.

7. The Minnesota Environmental Rights Law should be amended to remove the present exemption for family farmers or family farm corporations. There is no justification for the exemption except the fear by these groups of enforcement of the present regulations. The fact that these interests were able to obtain the exemption originally, makes it more likely that the MPCA enforcement of the regulations will be lax, and that private citizens will feel it necessary to resort to legal action.
8. In order to further encourage active citizen participation, all applications for permits or variances should be published in a daily newspaper in the area, preferably of general circulation, at least three weeks before a decision will be made. At the request of a certain number of people, a public hearing on the application should be held.
9. Toxic and hazardous waste materials represent a real danger in handling, and disposal; all phases of handling this waste should be regulated, and another means of disposal, possibly incineration, should probably be funded by the state.
10. The monthly reports which are submitted from disposal sites should include ground water monitoring, and these results should be made public.
11. The present laws should be clarified to give MPCA specific regulatory authority over types of solid waste not now specifically included (e.g. demolition debris, fill, etc.) and over closing of existing solid waste handling facilities.

12. The MPCA should be able to require environmental impact statements to be included with application for a solid waste permit.

PART IISource and Scope of Authority

Under Laws 1969 Chapter 1046 (codified as Minnesota Statute 1967, Section 116.07), the PCA was given authority for the following areas in solid waste management:

1. Adoption of standards and regulations for the control of collection, transportation, and disposal of solid waste (Subd. 2).
2. Enforcement of the law, regulations or standards, including use of injunctions and other court action.
3. Preparation of a state solid waste management program.
4. Issuance of permits for air, land, and water pollution control, and to prohibit construction, alteration, or operation of facilities (Permit Issuance Bill, amendment to Section 116.07).

The Abandoned Motor Vehicle Bill (Minnesota Statute 1971, Chapter 168B) specifically directs the MPCA to take responsibility for the disposal and reuse of abandoned motor vehicles and other scrap metal; it prescribes the duties and powers, provides fees for administration, imposes a tax, and provides penalties.

Funding

The total budget of the Solid Waste Division for fiscal year 1972 was \$150,000 (approximately) which represented about 10% of the total expenditures of the agency. Over 50% of the funds come from federal sources; presently MPCA is receiving \$153,000 from a planning grant (over a two year period) which requires 50-50 matching funds, and

\$47,000 from a training grant with 75-25 matching. All of the federal monies are appropriated under the Resource Recovery Act of 1970. The agency hopes to receive a demonstration grant in 1973 for \$278,000; this will be used to set up regional solid waste officers in the five regional offices.

Federal policy directs funds to states which are beginning activity in the solid waste field. Since Minnesota has a relatively well established program, federal funds are being phased out; the planning grant has expired and the training grant will end in 1974. The solid waste division hopes to obtain 100% state financing from the 1973 legislature.

Funds are provided for the abandoned motor vehicle program from a \$1 tax imposed on all transfers in the state. Last year \$800,000 was received, but since the program did not get started until March, only \$150,000 was used. Since it is a dedicated fund, the rest of the money was returned to the state.

Rules, Regulations, and Policies

A. As noted earlier, the basic authority of the MPCA in the area of solid waste management is detailed in Section 116.07 of the Minnesota Statutes. This directive, and that in the Abandoned Motor Vehicle Act, outline the general area of concern. The executive board has adopted the regulations authorized in these laws, including:

1. Solid Waste Disposal Regulations (Jan. 12, 1970) covering storage, collection, transportation, and intermediate and final disposal by means of landfills, composting, or incineration,

- as well as county solid waste management systems;
2. Regulations for the Control of Wastes from Livestock Feedlots, Poultry Lots and Other Animal Lots (March 8, 1971);
 3. Regulations for the Disposal and Re-use of Abandoned Motor Vehicles and Other Scrap Metal (March 3, 1972).

All of these detail fairly completely the standards which are applied, and the requirement for obtaining a permit. They stop short of indicating specific sites for facilities, but agency staff encourages counties to specify locations which meet the criteria in their solid waste management plans. (Recommendation 6, pg. 16, Solid Waste Management).

B. The standards and regulations which have been adopted are based on theory and practices in the field of sanitary engineering. They were developed with the goal of allowing the least amount of pollution without increasing costs prohibitively. The regulations include requirements in the following areas:

1. Location -- prohibited in "shoreland", floodways, near public parks, roads, residences, or municipal or private wells;
2. Soil and rock substrata -- limited or prohibited (for toxic and hazardous waste) where leaching and contamination of ground or surface water is probable;
3. Visual and noise pollution -- provisions for limiting odor, controlling vermin and blowing material, an adequate all-weather road, fencing, etc.;
4. Completion -- plans for final use of the site;
5. Permit issuance -- specifications for engineering design, compliance, and denial or revocation of permit;

6. Monthly reports to MPCA on types and quantities of waste disposed.

Function

On a daily basis, the Solid Waste Division has spent most of its time reviewing permit applications for existing landfill sites. As of July 1, 1972, all disposal sites were to have either received a permit or been shut down, however over 1000, mostly in outstate areas, are still operating without permits. The staff is presently drawing up legal stipulative agreements for these landfills and allowing temporary permits to continue operating for one to three months. Once this preparatory work is completed, more staff time will be allotted for enforcement; in 1973 the budget will be almost double that of 1972. (Proposed 1972 budget is \$32,005; 1973 - \$60,429, source -- Activity Analysis). Even with this increase, however, the MPCA is encouraging the local governments to adopt a solid waste ordinance to provide the authority.

The staff also spends substantial time providing technical assistance and training to county officials responsible for the formulation and implementation of the solid waste management system plan. Although all counties were required to present final plans by July 1, 1972, only 15 have been completed, so this area will continue to occupy staff time during the next few years. The staff is presently working on a plan for the Solid Waste Division focusing on the next three years, but including some longer range projections. One of the major components of the plan is registration and construction of necessary pollution control devices for existing livestock and poultry feedlots. There are approximately 19,000 feedlots in the state and probably about 10,000

will need some kind of improvements. It is estimated that this will take about ten years to complete.

In addition, although the state has enough land to provide disposal sites for the next 20 years, recycling and reuse alternatives are being investigated. Most of the research in this area is being done at a national level; applications of results from these studies, as well as utilization of present technology to situations in Minnesota is the main focus of staff time. The Division of Special Services, however, has the primary responsibility for studies in this area.

Designated future functions: none.

Enforcement powers: The MPCA has very effective enforcement powers in the field of solid waste disposal, although it has relied mostly on permit issuance and persuasion to obtain compliance so far.

1. Permits: The following persons must receive permits from the MPCA: operators of disposal sites or new livestock feedlots, collectors, transporters and reducers, or scrap processors of abandoned motor vehicles. Permits are issued by the Executive Director; (Minnesota Statutes 1969, Section 116.07 gives this authority to the agency, i.e. the Board, which delegated it to the Director). Detailed engineering plans and soil analysis must be presented before a permit is issued. A permit can be required for an existing feedlot if the MPCA has determined that it is "polluting or constitutes a potential pollution hazard". Those landfills which still have not applied for permits are being required to sign legal stipulative agreements to force compliance

and temporary permits for from one to three months.

2. Denial or Revocation: All permits can be denied or revoked for non-compliance of the regulations, effective 90 days after the holder or applicant has been informed in writing. All revocations or denials are made by the Board and can be appealed to the courts. In cases where a permit has been revoked, the MPCA could probably take over operation of the facility if it were municipally owned; however, so far no permits have been revoked or denied and it is unlikely that this situation would arise since the MPCA prefers to use persuasion and/or the threat of legal action.
3. Variances: Variances can be issued by the Board of the MPCA in situations where any "provision of the regulation . . . would cause undue hardship, be unreasonable, impractical, or not feasible under the circumstances". Usually variances are of a temporary nature.
4. Assumption of Local Government Powers: (Section 115.48) If a county or municipality refuses to comply with the statutes or agency regulations, the MPCA Board can assume its powers, including the right to levy taxes and sell bonds, in order to provide adequate facilities and to follow previously adopted regulations. It is very unlikely though, that MPCA would ever use this authority.

Research Capabilities: The responsibility for most research in this field is located in the Division of Special Services; The Division of Solid Waste is directed more towards monitoring and enforcement.

Information Systems

Under present regulations, all disposal sites are required to submit monthly reports on the type and quantity of solid waste deposited. The reports are utilized mostly for staff information. They could be important at some future date as viable methods of recycling become available.

The counties are also required to inventory solid waste disposal sites as well as abandoned autos; the MPCA is registering livestock feedlots in order to obtain some minimal data. This information will be valuable for future planning efforts.

Intergovernmental Relations

a. Formal: Under Minnesota Statute, Chapter 4730, before a permit is issued in the 7-county metropolitan area, a copy of the permit application and supporting information is forwarded to the Metropolitan Council for determination as to whether the permit is in accordance with the Council's comprehensive plan.

The MPCA has required that all counties present solid waste management system plan for approval; the County Solid Waste Management Bill (Chapter 403) and the Metropolitan Solid Waste Bill (Chapter 496) authorizes solid waste management programs and the financing thereof (a 3 mill property tax levy).

b. Actual: The MPCA works very closely with municipal and county governments, preferring to use persuasion rather than force, partly from the realization that adequate surveillance of feedlots and disposal sites must rely on these individuals. Under most circumstances, the MPCA will

not issue a permit to an operator if the county, township, or municipality doesn't approve, even though the site meets the regulations. The staff are considering recommending a regulation specifying that sites must conform to county or regional plans where these exist.

The regulations required that each county prepare and submit a final solid waste management plan by July 1, 1972; a preliminary plan was required on July 1, 1971. The MPCA envisions a detailed document which would include:

1. Inventory of Existing Dumps
2. Final Solid Waste System Plan
 - a. Department with responsibility in county
 - b. Solid Waste Storage
 - c. Solid Waste Collection and Transportation System (with consideration of population, density, geography, geology, etc.)
 - d. Solid Waste Disposal Facilities

So far only 15 counties have presented final plans, although most have sent in the preliminary one. The major reason given for non-compliance by the counties is limited funds and therefore lack of adequate technical staff. The counties have been reluctant to use the 3 mill tax levy authorized for this purpose, attempting to "make do" with existing staff. Federal funds have been authorized for state, regional, and local planning, and MPCA has attempted to assist counties in obtaining such funds, but limited federal appropriations make it almost impossible.

The MPCA also works informally with various other groups: The

Association of Minnesota Counties, the Minnesota League of Municipalities, and the State Soil and Water Conservation Districts. These organizations assist individuals and local governments to comply with MPCA regulations by providing technical aid. The Association of Minnesota Counties held a workshop for county officials on solid waste management planning two years ago; their national organization has published a guide called Solid Waste Management.

The State Soil and Water Conservation Districts provide assistance mostly to individual feedlot owners, although they are probably referred to by county planning staff also. The technical consultant of each District will survey a farmer's land to determine if pollution exists, and if so, prepare engineering plans for control devices (such as terracing and catch basins). He also helps the landowner prepare a request to the federal government for funds; the federal government will pay up to 80% of the cost of control devices (with a limit of \$2500 per farm).

Clientele

Few groups have become actively involved in the field of solid waste disposal. So far, most of the regulations have not caused greatly increased costs to any large group of the society and most of the blatant instances of pollution have been stopped. The following groups have been involved in previous and present controversies:

1. Various farming groups have protested against stringent controls for feedlot runoff and, due to their legislative power and their guaranteed representative on the Board, have been

successful in avoiding regulation, except on an individual basis.

2. The bottle and can industry, as well as some grocery retailers, have been active in opposing attempts on both local and state levels to prohibit or require deposits on nonreturnable cans and bottles. They were successful in killing a bill that was before the 1971 legislature prohibiting these containers.
3. Environmental groups have taken positions on a few issues, mostly regarding feedlot pollution. However, no group has focused specifically on this area.

Externalities: The publicity caused by the burning ban probably was the first instance where people began to notice the quantity of garbage they generate and realize that disposal would be a problem. For many families, it required buying one or two, even three new garbage cans to provide space. A smaller group of people have begun to realize that all the garbage must be disposed of somewhere, in their case -- in their community -- usually after strenuous objections. However it remains doubtful whether the awareness has reached a point where people will begin to seriously consider alternatives such as recycling, reuse, and minimal packaging.

Review Mechanisms

- a. Agencies -- none.
- b. Governmental -- Although local governments must usually approve disposal sites, and MPCA normally respects their wishes, there is no legal requirement to take this into account. Conceivably an individual who met the agency regulations, but was denied a permit since he didn't

meet county requirements could sue MPCA to obtain a permit.

c. Boards -- Within PCA, the Director has only delegated authority to issue permits, which can be reviewed by the agency Board.

d. Citizen -- The citizen has two means of affecting agency actions. Informally, the Solid Waste Division encourages complaints by individuals about instances of pollution and relies on them very heavily in investigating livestock feedlots, as well as landfills. Formally the Minnesota Environmental Rights Law (Section 116B) authorizes any citizen to "maintain incivil action in district court against any person for the protection of the air, water, or land . . ." (Section 116B.03).

However, certain persons are exempt: a family farm, a family farm corporation, or a bona fide farmer corporation; this could have significant effects on the control of rural feedlot pollution if MPCA fails to actively enforce its own regulations. A limit to citizen participation is the lack of prior notice and public hearings on requests for permits and variances, although sometimes the public is involved at the county level.

e. Judicial -- All applicants or holders whose permits are denied or revoked have the right to appeal pursuant to Minnesota Statutes, Chapter 15.

f. Legislative -- Every two years, the MPCA is required to present a "long-range plan and program for the effectuation of its policy and make a report also of progress on abatement and control of air and land pollution". With this data the legislature theoretically can evaluate the agency's activities and issue new legislation to further its goals.

PART IIIINTERVIEWS

NAME: Ray Thron
TITLE: Environmental Planning, Metropolitan Council
ADDRESS: Metro Square Building
St. Paul, Minnesota

SUMMARY:

The Metropolitan Council has adopted a policy based on sanitary landfills for disposal in the next ten years. It recognizes that recycling is a better alternative, but present technology and pricing practices make it either not feasible or uneconomical.

All permit applications for landfills received by the PCA are sent to the Metro Council for approval. Although they have no statutory power in practice; the PCA will not license facilities which the Council has rejected. The policy of the Council center almost completely on location and operation of disposal sites, leaving to the counties and municipalities responsibility for collection and transportation.

NAME: Don Kyser
ADDRESS: Division of Solid Waste
Pollution Control Agency
707 S. E. Delaware
Minneapolis, Minnesota

SUMMARY:

Little federal funding is available under the Solid Waste Disposal Act; although \$265 million was authorized, only \$11 million has been appropriated. Duluth-Superior was the only Minnesota area which received planning funds. Presently some counties have applied for funds for demonstration projects under the implementation section of the act.

The Pollution Control Agency has completed a general state plan showing solid waste disposal facilities and is working on one which will set out what they will do in the next five years.

The feedlot regulations cover only those individuals who don't reuse the refuse: the soil and water conservation districts are helping farmers upgrade their facilities to meet the new regulations, providing up to 80% of the cost from state and federal funds.

NAME: Bruce Brott
ADDRESS: Division of Solid Wastes
Pollution Control Agency
707 S. E. Delaware
Minneapolis, Minnesota

SUMMARY:

The abandoned vehicle program was authorized by the 1971 legislature; this would provide funds from a \$1 tax on car transfers to cover costs of collecting and processing all abandoned cars in the state. In the first year, only \$150,000 of \$800,000 was used, mostly because the program got off to a late start. Fifty-seven counties applied for \$2000 each to inventory all abandoned vehicles. The PCA has spent \$35,000 on collection sites, and plans to contract for salvage operations this year.

Almost all counties have submitted the preliminary plans due July 1, 1971 but only 15 have submitted the final plan. This final plan should include storage collection, disposal, rates, financing, a solid waste ordinance, and licensing of collections. The counties in the metro area, however, are required only to inventory disposal sites. No funds are available to reimburse planning costs although a 3 mill tax can be levied by the county. Some of the counties have written joint solid waste management plans.

All dumps should have been closed as of July 1, 1972 but some are still operating; in these cases, the PCA is using legal stipulative agreement to obtain compliance. If this fails, they will take legal steps to resolve the situation. The soil conservation districts have been helping farmers draw up plans for agricultural wastes which the PCA

checks and approves.

The PCA would like the counties to be in charge of inspection of sanitary landfills and is encouraging them to pass solid waste ordinances for this purpose.

NAME: Larry Kramer
ADDRESS: Division of Solid Wastes, PCA
707 S.E. Delaware
Minneapolis, Minnesota

SUMMARY:

The Division of Solid Wastes now receives over 50% of its funds from federal sources, but this is a temporary situation and will ask for 100% funding from the 1973 legislature. They are now receiving a 50-50 matching planning grant with a total of \$153,000 and a 75-25 matching training grant of \$47,000. They are applying for a demonstration grant of \$278,000 which would be used to hire a solid waste officer at each of the five regional offices.

They are now setting up a registration system for feedlots in Minnesota, which number about 19,000. This will entail only the name of the owner, number of head, type of operation, and the location, but eventually they plan to make an on-site inspection to determine if pollution exists. Probably about 10,000 will need some sort of control devices. The staff estimate that it will take about ten years before all feedlots are brought up to standards. At present, notices of violation of the regulations are issued mostly after citizen complaints; the owner is given six months to comply, and most have been very cooperative. The State Soil and Conservation Districts have given much technical assistance.

The major problem with solid waste is collection and transportation, which is still being left to the counties and municipalities. About 1,000 dumps must still be either upgraded or closed, but substantial progress is being made.

The MPCA is presently working on short-range plans for 1973 - 1975, with some long-range goals included. Presently the agency utilizes a plan finished in 1970 and approved by the Environmental Protection Agency called State Plan for Solid Waste Management.

NAME: Blaine Seaborn
ADDRESS: Division of Solid Waste, PCA
707 S. E. Delaware
Minneapolis, Minnesota

SUMMARY:

The power to issue permits for landfills and feedlots was delegated to the Executive Director by the agency board. He does not have to have any public discussion about the permit; this is usually done at the local or county level. Usually the MPCA tries to work closely with local administrators and attempts to coordinate landfills with county plans where they exist.

The MPCA has never revoked a permit. Presently, if a revocation were necessary, the Executive Director would have to appoint a hearings officer to hold a public hearing. If a substantial number of hearings were necessary, the MPCA might request funds to hire its own hearings officer. In all cases, the MPCA prefers to use persuasion rather than legal means to obtain compliance.

NAME: Howard Grant
TITLE: Assistant to Executive Director
ADDRESS: State Soil and Water Conservation Commission
320 North Hall
University of Minnesota
Minneapolis, Minnesota

SUMMARY:

There are 91 soil and water conservation districts, each with their own staff. Soil is the biggest polluter, and the districts encourage use of soil conservation techniques which diminish this problem. The district staff will survey a feedlot for pollution at the request of the landowner, and if necessary, will design the arrangement at no cost.

The federal soil conservation service provides the majority of the funds for these districts. They also will provide cost sharing funds of up to 80% for construction of pollution control devices, with a limit of \$2500 per farm. In 1971, 73 feedlot structures were built.

NAME: Wes Fischer
ADDRESS: Division of Special Services
Pollution Control Agency
707 S. E. Delaware St.
Minneapolis, Minnesota

SUMMARY:

The Pollution Control Agency has a directive from the state legislature to present a plan every two years including long-range objectives. Some research is being done on short-term means of encouraging recycling such as packaging taxation or lowering freight rates for scrap iron. However, insufficient funds hinder a more significant research effort. A fund which could give grants to subsidize recycling projects would provide a practical application for experimental technology. The system set up to recover abandoned vehicles could be applied in other areas such as nonreturnable cans.

NAME: Mentor C. Addicks
ADDRESS: Association of Minnesota Counties
55 Sherburne
Suite 203

SUMMARY:

This organization provides mostly informational assistance to counties developing solid waste management system plans. Two years ago, they held a workshop for county officials, utilizing a guide published by The National Association of Counties -- Solid Waste Management.

RESOURCESLiterature

1. Minnesota Pollution Control Agency, State Plan for Solid Waste Management, Nov. 1970.

Elucidates a general plan for solid waste, focusing on disposal sites, and steps to be taken to end air, water, and land pollution. Was approved by the Environmental Protection Agency.

2. _____, Solid Waste Management (Funded through a federal training grant (No. T-900030) authorized by the Solid Waste Disposal Act).

This is the textbook for a county-regional solid waste management training program. It includes information about the MPCA and enabling legislation, as well as regulations. It discusses disposal techniques, the burning ban, state objectives, goals, and recommendations. It also has a chapter on county plans, what they should consist of, and the model ordinance. The report lists a number of legislative proposals and amendments to existing regulations which would improve the agency's capabilities.

3. National Association of Counties, Solid Waste Management, Research Foundation, Washington, D. C.

A guide used for seminars on county solid waste planning.

4. Metropolitan Council, Metropolitan Development Guide, Solid Waste Management, Policies, System Plan, Program, adopted March 12, 1970.

This discusses long-range policy and short-range programs to solve the problem of solid waste in the metro area.

Legislation

1. Pollution Control Agency (Minnesota Statutes Chapter 116)

Giving the pollution control agency, among other authorities, the authority to develop a state solid waste management program and establish regulations.

2. County Solid Waste Management Bill (Minnesota Statutes No. 403)

An act authorizing county solid waste management programs and the financing thereof and establishing the powers and duties of certain counties in connection therewith.

3. Abandoned Motor Vehicles Bill (Minnesota Statutes Chapter No. 734)

An act relating to the disposal and reuse of abandoned motor vehicles and other scrap metal, prescribing duties and powers of the Minnesota Pollution Control Agency relating thereto; and providing fees for administration thereof; imposing tax; providing a penalty.

4. Junk Yards on Trunk Highways Control Act (Minnesota Statutes Chapter No. 881)

An act relating to the regulation of junk yards on trunk highways.

5. Metropolitan Solid Waste Bill (Minnesota Statutes Chapter No. 496)

An act relating to metropolitan solid waste disposal; providing for transfer stations, nonconforming solid waste disposal sites or facility; authorizing tax levy; providing for publication of ordinance.

6. Permit Issuance Bill (Minnesota Statutes Chapter No. 904 - amendment to Section 116.07)

An act relating to the Minnesota Pollution Control Agency; authorizing permit issuance for air and land pollution control; prohibiting

the construction, alteration and operation of certain facilities without a permit.

Regulations.

1. Solid Waste Disposal Regulations, January 12, 1970, Minnesota Pollution Control Agency, Division of Solid Waste.
2. Regulations for the Disposal and Reuse of Abandoned Motor Vehicles and other Scrap Metal, adopted March 3, 1972, Minnesota Pollution Control Agency, Division of Solid Waste.
3. Regulations for the Control of Wastes from Livestock Feedlots, Poultry Lots, and Other Animal Lots, adopted March 8, 1971, Minnesota Pollution Control Agency, Division of Solid Waste.

CHAPTER VLAND USE PLANNINGPART IINTRODUCTION

There are no state-wide policies regarding land usage in Minnesota. Rather, control of private uses of land is concentrated in the individual counties and incorporated areas who are free to regulate development as much or as little as they desire. Cities, and counties may join together into regional planning and/or regional development commissions to tackle region-wide problems, but, again, there are no specific policy guidelines provided by state statute.

Some state agencies exercise indirect controls over land usage via such mechanisms as the Pollution Control Agency's waste disposal permit system or the Department of Natural Resources' development of model floodplain and shoreline management ordinances for counties, but none have formulated any clear concept of what constitutes the "best" use of Minnesota's land resource. There are efforts being made, however, between DNR's Division of Lands and Forestry and the State Planning Agency to classify all state-owned or trust land.

SUMMARY AND EVALUATION

In order to broaden the scope of land use planning and regulation in Minnesota to include environmental decisions, greater understanding within the state of the possible long-term benefits of planning, and

a close scrutiny of present mechanisms for policy effectuation are required.

Fundamental to improvement of policy making will be an information source, free from single agency bias, which can provide a key to the interrelationships of the many fragmented activities throughout the state which have environmental impact. Perhaps, then a "holistic" approach to ecological problems can be approached. George Orning's data survey, the Minnesota Land Management Information System, is the beginning step towards such an end. In depth analysis of MLMIS's relationship with present data sources and assessment of the difficulties such a project will be facing when seeking information from state agencies should be done in the near future.

A review of policy making must take into consideration the variations around the state in local perception of environmental needs or problems. Southwestern Minnesota will not share many concerns with the North Shore region, for instance. Thus, a state-wide approach to land-use controls should be carried out in broad terms, allowing for the geographical differences in the state. Awareness of how local and outstate, rural and urban differences of opinion on land use controls would be expressed in the legislature is important to the efforts to find an acceptable decision-making mechanism for greater land use management.

The execution of whatever environmental policy is finally determined probably should not rest with any existing state agency. The present system of co-equal, semi-autonomous agencies does not allow for a comprehensive approach to environmental solutions. A stronger, more centralized agent is required. One possibility is to increase the role of the State Planning Agency, although they may object to being burdened with administrative responsibilities. Another body which may enforce cooperation among agencies is the newly-created Environmental Quality Council. At present, only five agencies are members of the Council, with liason efforts between the Council and other affected agencies performed on an ad hoc basis. Before this body is ever statutorily confirmed, a stronger role in coordinating interagency efforts should be developed for it.

Statewide administration of land use policies should probably be carried out via Regional Development Commissions. Yet the viability of those bodies has not been yet adequately tested. Moreover, greater effort would have to be made to persuade all of the regions to organize themselves. Were the state to step in and force adoption of Commissions, however, local resentment would be much too high. One means of indirect state-level pressure would be a realignment of the agencies' administrative districts along regional boundaries. The Health Department, for instance, has already revised its eight districts to conform, where feasible, to regular Development Commission lines. If PCA and DNR, the two major environmental agencies, were to do likewise, regional levels of government would hopefully function relatively well as coordinators of local and state policies.

PART IIA

OFFICE OF LOCAL AND URBAN AFFAIRS
of the State Planning Agency

Source and Scope of Authority

The Office of Local and Urban Affairs, (Office), was created in the State Planning Agency, (SPA), in 1967, (Minnesota Statutes 4.11, Subd. 7), when the planning and housing functions of the Department of Business Development were transferred to the SPA.

Minnesota Statutes 4.12, Subd. 4 and Subd. 5 enumerate specific responsibilities for the office and limits the office in certain areas, cf. "Functions", below.

Funding

The Office is funded through the regular appropriations procedure with the Department of Administration and the Legislature. The State Planning Agency is authorized to apply for, accept, and expend federal funds for the SPA and the Office.

Rules, Regulations, and Policies

The Office doesn't have specific rules and regulations concerning land use planning. It has, however, set certain standards of education and experience for planning consultants hired by local governments under the HUD "701" program, cf. "Functions", below.

Functions

The Office is directed to 1) undertake studies to obtain information and data on urban and rural needs, assistance programs,

and activities. It provides technical assistance and advice in the solution of such problems. Its duties include the assembly, correlation, and dissemination of physical, social, and economic development data to inform local governmental units and interested persons of the availability and status of federal, state, and local programs and other resources for urban and rural problem solutions; 2) make available to the governor and the legislature pertinent information relating to federal grants-in-aid to local governments and to analyze them; 3) inform local governmental units about federal programs of social or economic aid or assistance for which they are eligible, together with the criteria, standards and conditions upon which aid is based, (Minnesota Statutes 4.12, Subd. 4).

The Office cannot itself fill out applications on behalf of a unit of local government, nor can it "promote" any federal grant-in-aid or planning programs, (Minnesota Statutes 4.12, Subd. 5).

The Office is also the designated liaison between the state and federal governments and the Regional Development Commissions. The basic public information and intergovernmental coordination dissemination necessary for the creation of Regional Development Commissions in each of the Economic Development Regions designated by the Governor, cf. "Regional Development Commissions", below. The Office is subsequently to have only advisory jurisdiction or responsibility in any area of the state within the jurisdiction of a metropolitan planning agency or regional council created by law.

The Office has no enforcement powers.

Information Systems

The Office has three professional community planners on its staff, but their primary function is to oversee the contracts between local units and private planning consultants for the formulation of local long-term comprehensive plans from funds furnished by HUD's "701", community planning program. Otherwise, its specific information on land usage comes from hired consultants.

Intergovernmental Relations

Intergovernmental relations is the Office's principal function as it is the liaison between the federal and the state, and the regional, and the county, and the city and the local governments.

As far as relations with other state agencies, this writer found no formal or informal programs of cooperation or areas where such are needed.

Clientele

The clientele of the Office are the local and regional units of government of the state, and the federal agencies whose aid programs to the state and local governments are coordinated by the Office.

Review Mechanisms

No specific review mechanisms of Office policies exist besides the Governor, himself.

PART IIB

REGIONAL DEVELOPMENT COMMISSIONS

Source and Scope of Authority

The enabling legislation for the creation of Regional Development Commissions is the Regional Development Act of 1969, (Minnesota Statutes 462.381 to 462.396, as amended by Chapters 153 and 174, Laws 1971). In it, the legislature finds that intergovernmental cooperation on a regional basis is an effective means of pooling the resources of local government to approach common problems. The state is divided into 11 regions, excluding the 7-county metropolitan region of Minneapolis-St. Paul. Upon receipt of a petition of local governmental units which represent a majority of a regional population, the Governor shall establish a Commission, (cf. the interview with Mr. Jim Solem, below, for a summary of the present status of each of the 11 Commissions). There is no requirement that every region shall have a Development Commission.

Funding

A regional commission, upon submitting an acceptable work program to the Governor, may be funded up to \$25,000 in the fiscal years 1970, '71, '72, and '73 by the Governor. Thereafter, it may through each county government, levy a property tax in the region, not to exceed ½ mill. Also, a Commission can receive federal grants in aid, loans, and gifts.

Rules, Regulations, and Policies

A Regional Development Commission is assigned the task of preparing and adopting a regional comprehensive development plan consisting of policy statements, goals, standards, programs and maps prescribing guides for an orderly and economic, public and private, development. The comprehensive plan must recognize future developments having a regional impact, including but not limited to: land use, parks and open space needs, necessity and location of airports, highways, transit facilities, public hospitals, libraries, public and private schools, housing and other public buildings. No development plan or portion of plan may be adopted until 60 days after its submission to the SPA for review and comment. The SPA does not have the right to suspend or revoke any such plan.

Each city, village, borough, town, county, watershed district, and soil conservation district, all or part of which lies in the region must submit their comprehensive plans to the Regional Commission, which has 60 days to review any such long-term plans. The Commission has authority only to make comments and recommendations on them and to hold hearings to mediate differences of opinions between a unit of government's plan and any other affected unit in the region. The Commission also is to review comprehensive plans having regional impact of independent commissions, boards, or agencies. If the Commission finds such a plan incompatible with its own Comprehensive Plan, it may suspend that plan indefinitely. The final mediator in such a difference of opinion would be the Governor.

Function

Beside formulating a comprehensive development guide for the region, a Commission is also directed to review all applications of local government and agencies for state and federal grants. A Commission may develop a center for data collection, storage, and dissemination. It may also provide local units of government with planning services and technical assistance.

A commission has no enforcement powers.

Information Systems

The one Regional Commission which has a Comprehensive Plan well underway has contracted with special consultants to provide the requisite knowledge for each specific component of the plan.

Intergovernmental Relations

The principal function of a Regional Development Commission is to coordinate the planning activities of local units which have regional impact, and to act as regional "clearinghouse" for applicable federal and state assistance programs.

The SPA and its Office of Local and Urban Affairs are designated the coordinators of the state's assistance programs to the regional planning and development commissions.

Clientele

A Commission is designed to assist local units of government.

Review Mechanisms

The Governor determines if a Commission's working plan is acceptable, but the Office of Local and Urban Affairs will probably have already helped a Commission determine its management needs. As stated above, the final arbiter in a difference of opinion between a Commission and an independent agency or commission is the Governor. So far, no need for that recourse has occurred.

PART IIC

COUNTY AND CITY PLANNING

Source and Scope of Authority

Since 1959 all counties in Minnesota, excluding Hennepin and Ramsey, have the authority to establish a planning commission, prepare comprehensive plan, and prepare, adopt, and enforce a zoning ordinance, (Minnesota Statutes 394.21-394.37). A county's comprehensive plan applies only to unincorporated area, but it may specifically control plotting and land development.

Municipal planning was codified in 1965 under the Municipal Planning Law, sections 462.351 to 462.364. A municipality may create a planning agency by charter or ordinance. It may adopt a comprehensive plan. A municipality may adopt a zoning ordinance which may be extended two miles into unincorporated territory in a town or county not having zoning regulations of its own. A city may adopt subdivision regulations.

Funding

The county board of supervisors may allocate as many funds as they deem necessary for planning. Likewise, a municipality may appropriate monies from any fund not dedicated to other purposes in order to finance its planning activities. Both counties and cities may receive and expend grants and gifts for planning purposes and may enter into contracts with the federal and state governments or with other public or private agencies.

Rules, Regulations, and Policies

Once a county has adopted a comprehensive plan, it may adopt "Official Controls" to enforce it. Such Controls include the establishment of zoning districts which designate the lands for such usages as agriculture, forestry, recreation, residence, industry, trade, soil or water supply conservation, surface water drainage, shoreland conservation and any additional uses. Other Controls may be, but are not limited to, a zoning ordinance, an official map for highways and roads, an official map of public facilities, regulations and controls over the general design of physical improvements, any administrative codes or standards of any department of the state government.

A municipality may, likewise, adopt comprehensive plan prepared by an appointed planning agency. The agency must recommend means of implementing the plan, such as, but not limited to, zoning regulations, regulations for the subdivision of land, an official map, a program for coordination of the normal public improvements and services of the municipality, urban renewal and a capital improvements program. A public hearing must be held before a zoning ordinance can be adopted.

Function

The enforcement of ordinances, regulations, or "controls" adopted under a county's comprehensive plan is up to the County Board of Commissioners. Violations of such rules are misdemeanors, the fines for which are paid to the county and go in the general

revenue fund. In addition to other remedies, the Board, or one of its members, may institute appropriate actions or proceedings to restrain, prevent, correct, or abate violations or threatened violations, via the county authority. Also, any taxpayer of the county may institute mandamus proceedings in district court to compel specific performance by proper officials of their planning and enforcement duties.

A municipality may provide for enforcement by ordinance of its planning ordinances or regulations and fine violations thereof. It may also enforce such violations by mandamus, injunction, or any other appropriate remedy in any court of proper jurisdiction.

Intergovernmental Relations

A city, upon adoption of a comprehensive plan by its planning agency, must file copies with each contiguous municipality and with the regional planning agency if any have been established.

After a county adopts official controls, a town which wishes to plan or zone for itself cannot adopt official controls which would be inconsistent with those which the county has adopted.

PART IID

METROPOLITAN COUNCIL OF THE TWIN CITIES AREA

Source and Scope of Authority

The Metro Council was created in 1967 and its powers, duties, and responsibilities are contained in Minnesota Statutes, Chapter 473B. Therein, it is given the power of review of the comprehensive plans of local planning commissions or of any proposed matter having a substantial effect on Metro Area development, prior to their adoption by the governing body. The Metropolitan Council must review, and may suspend, the long-term comprehensive plans of independent commissions, boards, and agencies, such as: 1) the Metropolitan Airports Commission; 2) Metropolitan Transit Commission; 3) Park Reserve Districts; 4) Watershed Districts; 5) Hospital Districts; 6) Conservation Districts; 7) Mosquito Control Districts; 8) and the Minnesota Zoological Board. Additional responsibility given it concerning corridor highways is contained in Minnesota Statutes 161.171 et seq., the Highway Local Consent Act of 1969. The State Highway Department must submit to the council reports and recommendations on trunk highway corridor proposals in the Metro area, subsequent layout plans, and construction plans and specifications. The Council must approve corridor and layout plans. It can make comments and recommendations on construction and improvement of interstate highways.

The Metropolitan Sewer Act of 1969 (Minnesota Statutes 473C.01 et. seq.) gives Metro Council control over all Metro Sewer Board matters involving development. The Council must approve: the

Board's annual budget for operations, maintenance and capital expenditures; plans and specifications of Sewer Board projects before bids are advertised; Board's acquisitions of local sewer facilities; sewer service area boundaries determined by the board; and applications for or acceptance of any gifts, grants, or loans by the Sewer Board.

The Solid Waste Disposal Act of 1969 (Minnesota Statutes 473D.01 et. seq.) gives Metro Council the responsibility of approving the solid waste reports and plans of each of the metropolitan areas seven counties. The Council must review and make comments and recommendations on plans of counties to dispose of any property rights on land acquired under the Solid Waste Disposal Act. Before issuing a permit to establish or continue operation of a solid waste disposal facility, the application must be reviewed by the Council. If it disapproves it, the PCA cannot issue the permit.

The Council must approve or disapprove the acquisition of land by local authorities for parks and open space, if the money comes from Department of Interior Land and Water Conservation funds (LAWCON), the open space program of HUD, or the Natural Resource funds in the Minnesota State Treasury, (Minnesota Statutes 473B.06, Subd. 12; and 86.75).

Under the Airport Zoning and Development Act of 1969, (Minnesota Statutes 360.74 to 360.80), Metro Council is able to establish the boundaries of both the airport development area and aircraft noise zones.

The Metropolitan Council is the regional clearinghouse for applications by local units for federal funds from programs listed under the Federal Office of Management and Budgets' Circular A-95 Revised. If the Council finds that a proposed program has area-wide significance it makes comments and recommendations on the application. Federal legislation furthering such regional considerations include: 1) Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966; 2) Title IV of the Intergovernmental Cooperation Act of 1968; and 3) Section 102 (2) c of the National Environmental Policy Act of 1969. The usual A-95 procedures are not in effect for requests for assistance in urban planning under HUD's "701" program, where initial contact is made through the State Planning Agency's Office of Local and Urban Affairs.

Funding

Metropolitan Council raises money through a tax levy on all taxable property in its seven-county area. It also receives reimbursement from its subordinate Boards and for Transportation Planning. The Council also may, and does, accept gifts, apply for and use grants and loans from the federal and state governments or any person.

Rules, Regulations, and Policies

The Metro Council is directed by Chapter 473B to establish a Metropolitan Development Guide, a long-term comprehensive planning guide for regionwide development. The Development Guide is being compiled on a chapter by chapter basis. It has completed studies

and adopted as their guide for development chapters concerning Major Diversified Centers, Housing, Sanitary Sewers, Solid Waste, Parks and Open Space, and Transportation. Planned for inclusion in the Guide are chapters on Total Development, Airports, Air Quality, Criminal Justice, Finance, Health, Water Resources, and Aids. The Council, when reviewing the plans of cities, counties, and independent agencies and applications for state and federal funds, must use the applicable Development Guide chapter, (if it has been adopted), as the basis for its approval or disapproval or comments and recommendations. In areas such as Health planning, where a Chapter has not yet materialized, the Council makes its review decisions on criteria they've announced and adopted for the interim.

Function

There are 15 members of Metropolitan Council, appointed by the Governor from 15 equal-in-population districts. They meet twice a month. This membership serves on the following standing committees: 1) the Council Referral Committee, with 7 members, conducts reviews of local community and independent agency long-range plans and reviews requests for federal and state funds as required under federal laws and regulations; 2) the Council Development Guide Committee, with 7 members, prepares the Metropolitan Development Guide for the area; 3) and the Council Personnel and Work Program Committee, with 5 members, prepares the management guide on the role and administrative relationship of the Council with other units of government, and prepares the Council's work program and budget. Each of these committees meets twice a month.

The long-term functions of the Council, its committees, and staff, are the completion and updating of the Metropolitan Development Guide to insure regional coordination of planning.

Metro Council has no actual enforcement powers. Indirectly, it controls the long-term plans of local units for, if it disapproves such plans, the federal government is unlikely to grant aids for their implementation. Also, the Pollution Control Authority cannot issue a Solid Waste Disposal Permit if Metro Council disapproves of the site.

Information Systems

Much of the information used in compiling Chapters of the Development Guide is gained by the hiring of special consultants or is offered by state agencies. For instance, Metro Council is working closely with the Pollution Control Agency on its Air Quality Chapter.

Metro Council also makes extensive use of citizen advisory committees. There are presently five: 1) the Metropolitan Health Board has 19 members and conducts comprehensive health planning for services, manpower, and facilities, advising the Council on large scale hospital, nursing home, and boarding home care expansion proposals; 2) the Metropolitan Open Space Advisory Board has 25 members and conducts park and open space planning and liaison; 3) the Criminal Justice Advisory Committee has 33 members, conducts criminal justice planning and reviews applications for anti-crime funds; 4) the Housing Advisory Committee has 25 members; 5) and the Cable Television Advisory Committee has 25 members.

Intergovernmental Relations

Statutorily, the Council serves as the "clearinghouse" between local units of government and the state and federal grants and loans givers, (cf., Scope and Source of Authority). It is also legislatively directed to review plans of the State Highway Department for trunk corridor roadways planned for the Metro Area.

In addition, the Highway Department has been notifying the Council of plans for any state-aided road work in the Area. The Council is also a member of the Transportation Planning Program Management Committee along with a representative from the Highway Department, the Metro Transit Commission, and one each representing the Area's counties and municipalities.

Clientele

Metro Council primarily serves the cities and counties, townships, villages, and special purpose districts of the Area, through coordination of their plans which have intergovernmental impact.

The Council also facilitates the A-95 programs of federal agencies.

Review Mechanisms

Decisions of the Metropolitan Council may be appealed to the courts or to the state legislature; this mechanism has not yet been tried. Since members of the Council are appointed by the Governor, they are not directly responsible to the public or its review.

PART IIE

STATE-LEVEL PLANNING

At least 13 state agencies have the authority to prepare and carry out plans. Each one's powers are generally limited to very specialized functions and activities, however.

State Planning Agency

The agency designated to coordinate the planning activities of all these state departments and agencies is the State Planning Agency, which was created in 1965. Each state department or agency is required to regularly file copies of its planning programs with the SPA, (Minnesota Statutes, sect. 4.12 subd. 4). Moreover, all state agencies are required to cooperate with SPA, providing any information it may request of them, (section 4.5).

The State Planning Officer, (The Governor, vis a vis SPA), also is deemed the coordinator of the planning activities of all local levels of government. To effect this responsibility the Office of Local and Urban Affairs was created in SPA in 1967.

The State Planning Agency also has certain duties and powers related to the land of the state. It is the duty of the State Planning Officer to study the general topographic survey and mapping needs of the state and promote coordination of surveying and mapping by public and private agencies, (sect. 84.54). It is also his duty to classify all public and private lands in the state with references to the use to which they are adapted. He is

to consult with the land classification committee of each county, but his determination is to be final, (sect. 92.36). The SPA is funded by legislative appropriation.

Department of Natural Resources

The Commissioner of Natural Resources is required to develop model standards and criteria for the subdivision, use, and development of shoreland for unincorporated areas. If a county fails to adopt an acceptable shoreland conservation ordinance by July 1, 1972, the Commissioner is empowered to adopt a model ordinance to the county based on his standards; (Minnesota Statutes 105.485).

The Commissioner is required to collect and distribute information relating to flooding and flood plain management, and assist local units of government. He is authorized to develop flood plain management ordinances. When sufficient technical flood plain data is available, affected local government units shall be notified, and shall adopt an acceptable flood plain management ordinance as soon as possible. Ordinances or amendments adopted after June 30, 1970 require prior approval by the Commissioner. Restrictions on construction and alteration of structures, fill, and deposits in flood plain areas are imposed by Minnesota Statutes 104.01-104.07.

PART IIIINTERVIEWS

DATE: 12 July 1972

NAME: Jim Solem

TITLE: Director of the Office of Local and Urban Affairs, SPA

ADDRESS: Room 200, Capitol Square Building, St. Paul

TELEPHONE: 296-3091

Mr. Solem adamantly states that land use decisions should remain in the hands of local officials; they are more intimately aware of their problems. He readily admitted that a local government, when faced with a difficult tradeoff between environmental quality and economic development, would probably opt for an increase in its tax base. He added that the revenue-sharing bill passed by the 1971 state legislature may alleviate this common problem. If a local government is controlled by parochial interests, Solem feels, a regional commission is the best level of government to insure that the concerns of a broader constituency are met. Even statewide policy is best administered through regional systems. Much resentment has been in evidence in out-state, especially rural areas, against heavy-handed bureaucracy in St. Paul. Mr. Solem especially singled out the need on PCA's part for increased sensitivity to local sentiment, needs and desires. He also feels that regional bodies, closer to the areas in question, can make more intensive surveys of environmental problems than a remote agency and, conversely, can serve as convenient mechanisms for implementation of state policies.

In regard to the presently organized Regional Development Commissions, Solem feels it is too early to assess success or failure. The Arrowhead Region, which has been in existence the

longest, (5 years), has completed a Comprehensive Water and Sewer Plan and is beginning a regional solid waste plan. Region 2 has been in existence for 1 year now and Region 9 for two months. He expects Region 4 to be ready to form a Commission by the end of this summer. Region 1 and 2 may combine because of their small populations. The lines between Regions 4 and 6W and 7 and 6E are not firm yet. Region 8 is principally agricultural and distrustful of "big" government although all of its nine counties cooperate on shared problems, but under their own format. Region 10 is mostly amenable to regionalism, but for one or two "backwards" counties. One pressure for regional government is increasing awareness of shared problems of development, i.e. crime control, highways, industrialization. The biggest pressure is the requirements of many federal grants-in-aid programs for regional comprehensive plans.

NAME: Bert Tieg
TITLE: Community Planner, Office of Local and Urban Affairs
ADDRESS: Room 200, Capitol Square Building, St. Paul
TELEPHONE: 296-3020

Mr. Tieg estimates that 70 of the 87 or 88 counties in the state have completed comprehensive plans. Basic research in each has gone into population records, economic base, present land uses, and highways and major roads. Counties, usually with help of a consultant, then project, (usually for a 20-year period), future land uses, economic shifts, population changes, etc.

The Office, vis a vis Section 70 of the Federal Housing Act of 1954, oversees the contract between a participating county and its private consultant. The Office has minimum standards of education and experience for consultants under 701. Thus, there are some means for the state to ensure a minimum quality in most of counties' comprehensive plans.

DATE: 7 August 1972

NAME: George Orning
TITLE: Director, Minnesota Land Management Information Survey, (MLMIS)
ADDRESS: 2001 Riverside Avenue, Minneapolis
TELEPHONE: 373-5865

MLMIS is attempting to compile a standardized data pool of state agency information regarding land usages in Minnesota. Mr. Orning finds it imperative that state government have reliable, comprehensive, and comprehensible data in order to best determine environmental policy. His efforts to compile such a data bank are single-minded purposes, without applying those information reservoirs to the development of comprehensive plans. The worst example of this, he feels, is DNR, whose different staffs don't even share data. Game and Fish don't keep records which could be used by Parks and Recreation people. Similar problems exist between the Health Department and PCA. Thus, the need for standardization and a pooling of information.

DATE: 6 July 1972

NAME: Roger Hill

TITLE: Liaison with other agencies, Road Design Section, Highway
Department

ADDRESS: Highway Building, St. Paul

TELEPHONE: 296-3046

Mr. Hill explained efforts of his department to assess the environmental impact of new highways and state-supported roads. They refer their prospective designs to DNR, the State Historical Society and local planning bodies, (the latter which they are required by statute to do). An inter-departmental agreement between Highways and DNR outlines in some detail the procedure of referral and final decision making.

RESOURCES

Literature

Hoyt, John S., Jr., Regional Development Systems in Minnesota, State Planning Agency, January 1969.

Important as it explains the many reasons behind a regional approach to Minnesota's development, and why the present boundaries were chosen.

Metropolitan Council of the Twin Cities Area, Metropolitan Development Guide, Introduction, February 25, 1971.

Introduces the M.D.G. and describes its purpose.

_____, Referral Manual, January, 1972.

Outlines the requirements of each unit of government when it wants to apply through the regional "clearinghouse" of Metro Council to receive federal and state funds.

Minnesota State Planning Agency, Protecting the Minnesota Environment Through Regulation of Private Land Use, 1972

This study by the State Planning Agency reviews the statutory authority of the state, regions, counties, cities and towns in relation to the increased concern for restoration and maintenance of environmental quality in the state. It states that the major weakness in Minnesota law is the concentration of land use determinations in counties and municipalities. They are autonomous, if they so choose to be, in their planning activities yet they are not provided by the state with any specific guidelines as to what constitutes good land usage. A county's comprehensive plan may only be a collection of colored maps as they are not required to adopt any official controls to implement it. The study also points out that there have only been three regional development commissions formed so far, none have formulated a comprehensive plan as of yet, and their power over its constituent bodies of government is purely advisory. Likewise, the authority of Metro Council is similarly limited.

In examining the role of state agencies in the regulation of land usage, the report shows that involved agencies make land use decisions on an ad hoc or piecemeal basis. None of them appear to determine their permit granting from any comprehensive plan, nor is there any substantial evidence of interagency cooperation on decisions or activities which may affect each other. It cites such examples as the Department of Natural Resources, (DNR), responsibility to issue permits for virtually all appropriations of surface and underground waters. Such a program has the potential of limiting considerable development in the state, yet DNR follows no plan for its permit issuances, which are handled by a staff of two. DNR also licenses

telephone and power lines and pipelines which must cross state-owned lands yet they have no policy guidelines as to what will constitute environmentally appropriate construction.

The Pollution Control Agency, (PCA), also has a considerable role in indirect land use decisions. It is responsible for the control of air, water, solid waste, and noise pollution. Via its permit issuances it controls the location of activities which generate these environmental hazards yet the PCA has no comprehensive plan whereby it can determine proper locations. Even were it to develop such working plans, as it presently is authorized, it still would have no direct control over land usage per se. The report points out, moreover, that not all land use decisions can be made on solely environmental criteria and the PCA is hardly the appropriate agency to determine social and economic criteria.

Protecting the Minnesota Environment further summarizes several approaches possible to make environmental impact a more important factor in land use decisions under Minnesota Law. The approach which this report feels would least upset the present land use control framework would be simply to amend present laws to include environmental factors as appropriate subjects for regulation.

"The Municipal Planning Act of 1965, for example, could state that a comprehensive master plan should consider 'ecological development', as well as 'physical, social and economic development', . . . and that zoning ordinances could regulate pollution emissions as well as height of buildings," (pp. 101-102). The SPA report, however, feels that specific environmental policies should be formulated by the legislature, as its function is, in fact, the determination

of state policy. Local governmental units should then be required to comply with them.

The study cites the National Environmental Policy Act as a feasible example of a state alternative. A Minnesota Environmental Policy Act could require state agencies and local planning authorities to submit environmental impact statements for all substantial developments within their jurisdictions. Such a system, however, might simply be an unwieldy bureaucratic process, having no substantial effect on land usage.

Finally, SPA suggests that the preferable alternative for a statewide comprehensive land use plan would be for the Governor, with the assistance of his Planning Agency, to develop and adopt such a plan. This would be better than assigning the role to DNR or PCA as they are co-equal and could not impress their plans on sister agencies. Under existing law, however, the Governor's plan could not be imposed on local land use control bodies. The best solution, then it is stated, would be a legislatively enacted statewide plan with broad land classification which would require local governments to adopt comprehensive land use plans and would require state approval of local plans.

For best results, the legislature's state-wide plan "probably should be developed and administered by an independent, bipartisan committee or commission", (pp. 110).

Legislation

Minnesota Planning Legislation, published by the Office of Local and Urban Affairs. State Planning Agency, January, 1972.

Regional Development Act of 1969, published by the Office of Local and Urban Affairs, State Planning Agency, January, 1972.

Rules and Regulations

Division of Lands and Forestry, Department of Natural Resources, Land Classification Program, February 12, 1970.

Outlines the procedure for classifying state-owned lands.

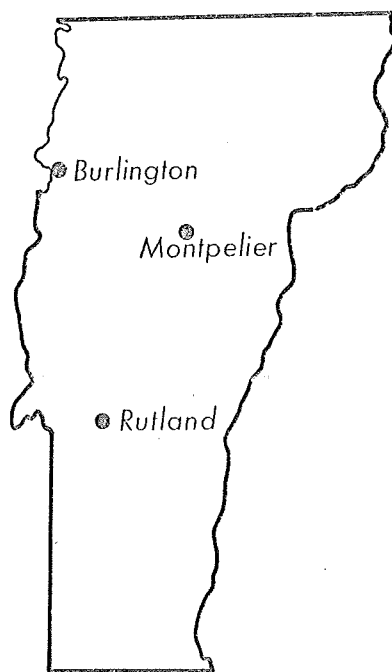
CHAPTER VIVERMONTSTATE PROFILEPopulation and Geographical Factors

Physically, Vermont can be characterized as a small state, 9,609 square miles, possessing a dry, bracing climate, no seacoast and a varied terrain ranging from the fertile farming valley regions of her eastern and western borders to the forested Green Mountains which bisect her (see accompanying map). Vermont is a North Atlantic State and the most north westerly of the New England group. It is bounded north by the Canadian province of Quebec, east by New Hampshire, from which it is separated by the Connecticut River, south by Massachusetts, and west by New York, from which it is separated for about two-thirds the distance by Lake Champlain. Lake Champlain is about 118 miles long, and in its northern portion are numerous islands which are attractive resorts during the summer season.

The general surface of Vermont is continuously broken by mountain ranges. The most prominent feature is the Green Mountains, which extend nearly north and south through the State a little west of the middle. The crest line of the Green Mountains is generally more than 2,000 feet high. In the southern half of Vermont and near the western border are the Taconic Mountains, a range nearly parallel with the Green mountains and extending northward toward the center of the State.

The existence of these mountains and a virtually unspoiled environment make Vermont very appealing to tourists and ski and second-home developers; southern Vermont has been especially subjected to accelerated recreational

VERMONT



Scale 1: 3,000,000

and industrial growth. Unfortunately, much of Vermont's soil is too thin, the terrain too steep and the ecosystems too delicate to support such demanding activities. Currently, 6.7 percent of Vermont's 5,937,000 acres is protected as federal and state-owned recreational land -- of this 6.7 percent, 238,600 acres are federal recreation lands while 152,000 acres are state recreation lands.

It is Vermont's mountainous terrain and small size which most distinguish it from Minnesota. However, both states possess large amounts of lakeshore and attract great numbers of tourists each year. Eight million people live within one day's drive of Vermont.

VERMONT

Total Area . . . . .	.9,609 sq. mi. (5,937,000 acres)	
Forest Area . . . . .	.5,800 sq. mi. (63%)	
Non-forest Area . . . . .	.3,500 sq. mi.	
Water Surface . . . . .	.331 sq. mi.	
State-owned Recreational Land . . . . .	.152,000 acres	6.7%
Federal-owned Recreational Land . . . . .	.238,600 acres	

Within this geographical setting, the growth of Vermont's population and economy from 1760 to the present has been uneven and unpredictable. Looking to the future, the population is projected to increase from 444,732 in 1970 to 469,500 in 1975 and 497,800 in 1980. This is an average annual increase of 1.1 percent for the first five years (reflecting the recession of the 70's) and 1.2 percent from 1975 to 1980.

An analysis of the 1970 Census indicates some important trends in the

composition of the Vermont population. First, the percentage of the population over 65 is declining. Second, there has been a large net immigration of working age people in the last 10 years. Third, the decline in the birth rate has changed the usual pyramidal form of the age groups. By 1980 it is expected that there will be fewer people in the 5 to 14 age group than in the 15 to 24 year age group.

Vermont is primarily a state of small towns and the proportion of people living in these small towns has not changed significantly since 1960 (see the accompanying table, Summary of General Characteristics: 1970). Thirty-one percent of the population lives in towns of less than 2,000 and 57 percent in towns less than 5,000. Although the Census lists Vermont as increasingly rural (25.6% increase), the growth of the suburbs around the state's urban areas is not truly an increase in rural living (this is usually classified as rural non-farm). See next page.

Outside the urban areas, Vermont appears to be populated at a low density. The average density for the state is 48 people per square mile. However, topography and living suitability of the terrain has to be taken into consideration when calculating density.

From 1950-60, three out of four of the natural increase in population out-migrated because of the lack of economic opportunities. From 1960 to 1970, the population grew by 14 percent. There are at least three important factors that have reversed the trend of the 1950's:

1. The economic base of the state has changed with the expansion of the ski industry.
2. The 36 million people living in the urban strip stretching from Boston to Washington, D.C. and 2.5 million in Montreal are now able

VERMONT

The State
Size of Place
SMSA's
Urbanized Areas
Towns and Places of 2,500
or More
Counties

	Population										Households			Population in group quarters		
	All persons							Persons 14 years and over— Percent married		Persons 18 years and over— Percent male	Number	Percent change 1960-70	Persons per household	Number	Percent of total	
	Number	Percent change 1960-70	Percent Negro and other races	Percent under 18 years	Percent 18 to 64 years	Percent 65 years and over	Fertility ratio ¹	Male	Female							
The State	444 330	14.0	0.4	35.3	54.0	10.7	324	63.8	59.4	47.5	132 093	19.3	3.21	20 307	4.6	
SIZE OF PLACE																
Urban	142 889	-4.7	0.5	32.9	55.4	11.8	339	62.5	52.5	44.5	44 578	-0.3	3.01	8 496	5.9	
Urbanized areas	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Central cities	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Urban fringe	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Other urban	142 889	-4.7	0.5	32.9	55.4	11.8	339	62.5	52.5	44.5	44 578	-0.3	3.01	8 496	5.9	
Places of 10,000 or more	68 135	6.1	0.6	31.3	57.3	11.3	301	59.0	48.7	44.0	21 067	9.7	2.98	5 404	7.9	
Places of 2,500 to 10,000	74 754	-12.8	0.5	34.3	53.6	12.2	377	65.8	56.2	44.9	23 511	-7.8	3.05	3 092	4.1	
Rural	301 441	25.6	0.3	36.4	53.4	10.2	408	64.5	63.1	49.0	87 520	32.6	3.31	11 811	3.9	
Places of 1,000 to 2,500	38 769	-2.1	0.3	33.1	52.5	14.3	362	65.0	54.8	44.4	12 342	1.9	2.99	1 829	4.7	
Other rural	262 672	31.1	0.3	36.9	53.5	9.6	415	64.4	64.5	49.7	75 178	39.5	3.36	9 982	3.8	

to reach Vermont by the new interstate highway system. (Most of Vermont is within three hours drive of major urban areas). Increasing affluence and a shorter work week will increase the number of tourists already vacationing in Vermont.

3. An apparent desire of a great number of people to escape large urban centers and seek simpler surroundings.

Economic Factors

Industries in Vermont include dairying, truck gardening and fruit growing, as well as approximately nine hundred manufacturing plants of all categories: first, lumber and wood products (23%); second, stone (marble and granite), clay and glass (19%); third, printing (12%); fourth, food (10%); all others (36%).

However, agriculture, forestry, and recreation remain the three main segments of Vermont's economy. They are characterized by their use of large areas of undeveloped land and by the fact that Vermont has the ability to compete successfully with other areas in these industries. Agriculture had gross receipts of about \$160 million in 1970. Gross receipts of recreational services (to skiers, tourists, vacationers, and campers) was approximately \$172 million in 1970. The value of timber harvested annually averaged over \$9 million (based on stumpage price) from 1948 to 1965.

Unfortunately, all three of these sectors are threatening each other's existence. Beauty is the crucial resource for the tourist industry. If the open land presently farmed reverts to brush or is cluttered with roadside developments, much of the beauty will be destroyed. The loss of Vermont's beauty will mean the decline of the recreation industry as well as a loss

to Vermont's residents who value beauty. Farms which are responsible for much of Vermont's beauty cannot compete with residential developments for use of the land.

Employment projections by industry are based on past trends in Vermont tempered by national projections made by the United States Department of Labor. The decline in textiles, poultry, and timber primarily reflect the declining comparative advantage of Vermont in the production of these items. For textiles, the cheaper labor and land in the South made it advantageous for firms to relocate. In the case of poultry, cheaper feed and poultry housing because of the climate helped shift production to the South. Efficiencies in processing have enabled western timber to compete successfully with Vermont production.

Examining growth rates in the state, in statewide totals only a moderate increase in manufacturing employment is projected. Most of this increase will be in durable goods production. An Analysis of Social and Economic Characteristics of Vermont predicts that the largest increases will be in the manufacture of electrical machinery, instruments, transportation equipment, and fabricated metals. Employment in lumber, wood, stone, clay and glass are expected to continue their steady trend downward while employment in furniture and fixtures is expected to increase steadily.

PROJECTIONS TO 1980 OF
EMPLOYMENT IN DURABLE GOODS

INDUSTRY GROUP	Employment		Numerical Change	Average Annual Rate of Change Percent
	Actual 1970	Projected 1980		
Lumber and Wood	2950	2000	-950	-3.8
Furniture and Fixtures	2050	3000	+950	3.9
Stone, Clay and Glass	2600	2000	-600	-2.6
Machinery	6050	6500*	+450	0.7
Electrical Machinery	9500	12000*	+2500	2.4
Other Durables	4050	6000*	+1950	4.0
Total Durables	27200	31500	4300	1.5

Source: 1970 Data, Department of Employment Security.

*Projections have very limited reliability.

Employment in non-durable manufacturing is not expected to grow significantly in the 1980's except in printing and publishing. The recessionary period has reduced the employment in this type of manufacturing by about 10 percent and their recovery may be slowed by the lack of capital needed to meet the environmental quality standards of existing legislation. Employment in food processing is expected to decline as output per worker increases and the added cost of pollution control may force small marginal firms to close. Employment in the apparel industry is dependent on low paid female labor and will probably not change much in the next decade. The paper industry is very capital intensive and is confronted by stiff competition in other parts of the country. Employment in rubber and plastics is expected to increase only moderately because of its susceptibility to recessionary period.

Whereas in 1950 employment in non-durable goods was almost equal with employment in durables, in 1970 employment in non-durable goods was less than 50 percent as high as employment in durable goods. This spread is likely to increase in the next decade as the employment is expected to increase at 0.9 percent annually compared to 1.5 percent in durables.

PROJECTIONS TO 1980 OF
EMPLOYMENT IN NON-DURABLE GOODS

INDUSTRY GROUP	Employment		Numerical Change	Average Annual Rate of Change
	Actual 1970	Projected 1980		
Food and Kindred Projects	2500	2000	-500	-2.2
Apparel	1550	1500	-50	-0.3
Paper	2300	2500	+200	0.8
Printing & Publishing	3450	5000	1550	3.8
Rubber & Plastics	1400	1500	100	0.7
Other Non-Durables	2200	2200	0	0.0
Total Non-Durables	13400	14700	1300	0.9

Source: 1970 Data, Department of Employment Security

Most of the new jobs will be in non-manufacturing. Almost 11,000 new jobs in trade, 13,000 in services, and 9,000 in state and local government are projected. Of the 39,600 new jobs, 27 percent will be in trade, 33 percent in services (in Vermont 22% of the employment is in hotels and motels which reflects the importance of the ski and tourist industry), and 22 percent in state and local government, with only 14 percent in manufacturing. Growth occurred at an annual rate of 1.5% from 1960 to 1965 and at a rate of 3.5 percent from 1965 to 1970. An average rate of 2.2 percent is projected

from 1970 to 1980. The fastest growing components are service employment (3.9%), state and local government (3.5%), and trade (3.3%). If employment in Vermont increases as projected, there will be 220,400 job opportunities in 1980.

PROJECTIONS TO 1980 OF
EMPLOYMENT IN NON-MANUFACTURING

INDUSTRY GROUP	Employment		Numerical Change	Average Annual Rate of Change
	Actual 1970	Projected 1980		
Wholesale Trade	4,950	7,000	1,050	3.5%
Retail Trade	23,150	32,000	8,850	3.3%
Services	28,750	42,000	13,250	3.9%
Government - Federal	4,000	4,500	500	1.2%
State & Local	21,800	30,700	8,900	3.5%
Contract Construction	10,050	12,000	1,950	1.8%
Transportation, Public				
Utilities	8,050	9,000	950	1.1%
Finance, Insurance, and Real Estate	5,600	7,000	1,400	2.3%
Mining and Quarrying	1,000	1,000	0	0.0%
Agriculture	16,350	12,500	-3,850	-2.6%
Domestic and Self- Employed	16,500	16,500	0	0.0%
Total	140,200	174,200	34,000	2.2%

Source: 1970 Data, Department of Employment Security.

Currently, industries are locating in Chittenden County (Burlington Area) because of a large work force, a location on the interstate highway between Boston and Montreal, good rail connections, a university and several colleges, a medical center, and a large market area.

Extremely aware of its 4.1 percent unemployment rate and convinced of a high underemployment rate, Vermont, according to Harry Behney, assistant

director of Economic Development, is currently using the following criteria when soliciting industry: (a) the industry should be small, (b) it should employ 99 percent local people, (c) it should have high pay scales, (d) and it should not be the sole employer in the community where it locates. Long-range 1973-1974 objectives are to stimulate in-state development by encouraging native inventors to market their products and by establishing cottage industries to supplement rural income. Non-polluting industries are welcomed; however, only weak incentives such as the revenue bond authority to help finance industrial park construction are offered to entice this type of industry to locate in Vermont. If any industry, solicited or unsolicited, indicates it wants to locate in Vermont, it is required to comply with Vermont's environmental laws; in this way, by enforcing arbitrary standards, Vermont avoids making direct trade-offs between jobs and environmental quality. Correspondingly, internal environmental impact statements are not required by the state; of course, Federal 102 impact statements are used in order to acquire federal funds.

Opposition to economic development is evident in two sectors. First, opposition is found among "newcomers" to the state -- people who either were transferred or retired to Vermont in the past 10 years. They are concerned with preserving Vermont's aesthetic quality and usually associate economic development with environmental degradation. Secondly, a well publicized backlash against Vermont's environmental laws has been organized by Common Sense, Associates, primarily a dues-paying businessmen's group concerned with economic and environmental balance. Common Sense, Associates has vehemently opposed certain members of the Environmental Board, accusing them of neglecting the economic health of Vermont while overemphasizing environmental dangers.

They plan lobbying activities during the next legislative session in order to weaken or redirect environmental legislation which they feel is hampering Vermont's economic progress.

Political Factors

The Vermont Legislature has traditionally split into Urban-Democrat-Liberal and Rural-Republican-Conservative delegations with the Republicans dominating. The predominance of the Republicans is evident in both the House and Senate of the General Assembly. The Senate is composed of 8 Democrats and 22 Republicans; similarly, the House is composed of 52 Democrats, 95 Republicans, and 3 Republican-Democrats. The Urban-Democrat and Rural-Republican tendency is especially evident in the Senate where 6 of the 8 Democrats are from Chittenden-Grand Isle County which contains the large industrial, urban area of Burlington.

Another tradition of Vermont and the New England states is a strong selectman and town meeting system; counties are virtually inoperable. Politically, the governor of Vermont has consistently played a strong and active role in state government being empowered to appoint a great number of state officials (the Environmental Board, for example).

The Legislature's concern for the environment and economic development probably reached its climax in 1970 when it passed Act 250, Vermont's omnibus environmental law. The passage of this law was the result of a variety of pressures including the explosion of recreation land development in southern Vermont and the failure of regional commissions to handle it properly, the existence of the Governor's Environmental Control Commission, the sudden awareness of environmental problems by the nation and the state, and the occurrence of an oil spill on Lake Champlain during the legislative session.

The influence and support of Governor Deane C. Davis who was elected on an environmental concern ticket and had no further political ambitions gave the needed impetus to the environmental legislation. Additionally, several previous environmental laws set a precedent for Act 250: a Mobile Home Law (See Appendix), Snowmobile and ATV laws, Shoreland Zoning, Junk Car Yard regulation, a Billboard Law, Container Tax (See Appendix), Flood Plain Zoning, Natural Areas Act, and Land Dedication.

Also in 1970, the discovery of mercury in fish throughout the state prompted the Vermont General Assembly to make substantial revisions to the state water pollution control statutes.

STATE REACTIONS TO ENVIRONMENTAL PRESSURES

Problems

Due to pressures and events which came to a climax in 1970, Vermont became acutely aware of the status of its environment. Following were its major problems:

- A. In 1970 the authority for environmental pollution control was spread over various state agencies and departments without any overall coordination. All the agencies set their own goals, created their own rules and regulations, lobbied for larger budgets, and implemented their own programs. Obviously, duplication of services in some areas and the absence of services in others was the logical result of this piecemeal process. In 1970 Vermont needed a well-organized and centralized pollution control mechanism to deal with the immediate threats to its environment.

See solution #1.

B. In 1964 Vermont attempted to establish regional government for planning purposes; the result was Vermont's Municipal and Regional Planning and Development Act (see Appendix). This Act merely permitted towns to form regional associations. In 1968 it was amended to allow towns to band together and pass by-laws and presented broad zoning guidelines for towns in regional planning associations. These regional associations failed for a number of reasons: (1) the goals were too broad and general, (2) the associations had no authority to implement their plans, (3) there was no central direction for the plans, (4) each local meeting could change the zoning laws annually, thereby losing any continuity in planning, (5) and the associations lost credibility because many of the regional commission members were new to the state (native Vermonters felt that they were not representative of the populations for which they were planning). By 1969 it was obvious that the Planning and Development Act was not working; for example, only 50 out of 246 towns had zoning and the southern Vermont towns couldn't handle the large-scale development underway in their communities. See solution #2.

C. According to Governor Deane C. Davis's Commission on Environmental Control (see Appendix), in 1970, large scale development was taking place at an accelerated pace and created an immediate problem in Vermont. The Purchase of land for recreation, second homes and vacation resorts had become a major activity of large corporations. Vermont has large areas of undeveloped land, much of it adjacent to ski and recreational resorts, and it was in these areas primarily

that such development was occurring. Much of it was taking place in Vermont's mountainous areas characterized by a fragile ecology, and in areas where the towns were of small population density with low tax rates and few municipal services. Not only would large-scale developments impair the landscape, but it would add a tremendous burden to local government's sewage disposal systems, police and fire protection, road construction and traffic congestion, educational and health facilities.

See solution #2.

- D. At the same time that their land use problems became painfully evident, Vermonters realized that the quality of their water was being threatened by unregulated sewage disposal into rivers, streams, lakes and ponds and by careless oil spills on its largest lake. The immediate crisis was the statewide discovery of mercury in its fish.
- See solution #3.

Solutions

1. Vermont settled its coordination problem by reorganizing its state government. The Agency of Environmental Conservation, in which the Environmental Board is located, now consolidates the state's environmental programs. Combined are efforts for fish, game, parks, forests, recreation, natural resources management, water resources development, water and air pollution control, sewage regulation, and solid waste controls. This cabinet level organization was created June 1, 1970 as a part of an overall reorganization of Vermont State government. In addition to an Administration Agency, other major new consolidated departments created that year were the Agency of Development and Community Affairs (funded by HUD 701 Community Affairs grants) and the

Agency of Human Services. The Secretaries of these agencies make up a new Governor's cabinet. In the same statewide reorganization the Central Planning Office was shifted to a new Executive Office of the Governor; however, it remains semi-independent of the governor's office, particularly from the budget function. (See Appendices for the statewide reorganization statute and the law creating the Agency of Environmental Conservation.)

The statute establishing the Agency of Environmental Conservation sets up the following divisions in addition to the Environmental Board, many of which have interests that overlap the Board's:

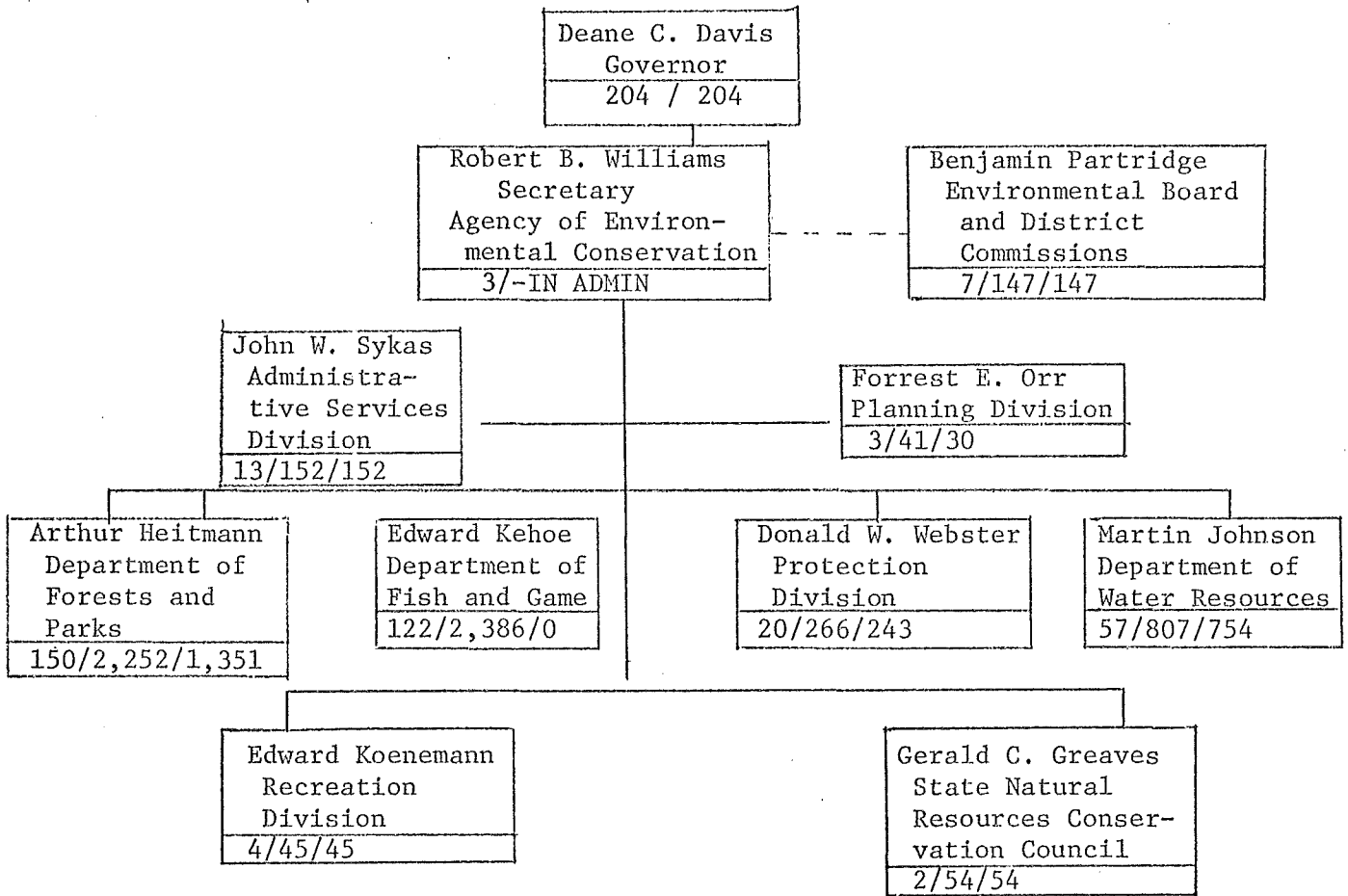
- Department of Fish and Game, formerly the independent Department of Fish and Game,
- Department of Forests and Parks, successor to the separate Department of Forests and Parks,
- Department of Water Resources, a reconstituted version of the formerly independent Department of Water Resources,
- Division of Protection which contains those activities from the Department of Health relating to water pollution and air pollution, radiation pollution, disposal of all types of wastes, including sewage, granting of permits for buildings or land, except hospitals and nursing homes. This division also is the enforcement arm for all units within the Agency, except the Fish and Game Department. The State Board of Health and the Health Department retain their power to make rules and determine that a source of pollution is a hazard to public health and to cause the source of pollution to be abated. However, the Secretary of the Agency can grant, deny, revoke, suspend or withdraw a permit granted under rules of the Board of Health with respect to buildings or land, except hospitals and nursing homes,

- Division of Recreation, is the successor to the State Board of Recreation,
- Administrative Services Division, which performs all administrative and management functions for the agency and its components, and the
- Planning Division, is a new unit created in 1970. This division conducts (1) centralized strategic planning for all components of the agency, (2) coordinating activities and plans of the agency with other major agencies and the Governor's office, (3) coordination of professional and technical planning of the components of the agency, and (4) preparation of multi-year plans and long-range plans and programs to meet problems and opportunities. This division is responsible for the Planning, Programming, and Budgeting (PPB) five-year plans.

After creating these units, the Agency reorganization statute converts all boards, committees, and councils to advisory-only status, except for the Fish and Game Board, the Environmental Board, and the Water Resources Board, which retain policy-making responsibilities.

Following is the organizational chart for the Agency of Environmental Conservation.

ENVIRONMENTAL
ORGANIZATION
CHART



Key:

A.
Agency
B C/D

- A. Agency Head
- B. Authorized number of classified and exempt employees
- C. Gross funds appropriated (\$000) FY 1972
- D. Net general funds appropriated (\$000) FY 1972

Following is an evaluation of Vermont's reorganization efforts:

- 1) The Central Planning Office is not successfully coordinating the planning decisions in each agency. This is resulting in fragmented, crisis-oriented planning for the several divisions without any long-range planning being accomplished by the Central Planning Office.
- 2) The same individual fills the position of State Planning Director and Environmental Board Chairman. Since a conflict of interest occurs, these positions should be held by different people.
- 3) It was evident that the 1970 reorganization efforts have left some scars, that many state administrators have not completely adapted to the new situation, and that all the new duties are not being carried out (the Central Planning Office, for example). As one state administrator pointed out, "It will take time to get things going."

2. Vermont attempted to solve both its regional planning problems and its land use development crisis by passing Act 250 (see Appendix). This act was originally designed by the Governor's staff and enacted by means of a bipartisan coalition in the legislature.

In summary, Act 250 is a means of regulating and planning Vermont's land use which is reflected in most of the state's other environmental laws. In fact, the law is best understood as being two laws administered under a single body -- the state Environmental Board. The "first law" in Act 250 provides for the decentralized regulation of most land developments and subdivisions in the state while the "second law" mandates statewide planning of land use. Upon completion, the statewide plans will become the primary guidelines for regulation of development and subdivisions.

Environmental Board

The Environmental Board, located in the Agency of Environmental Conservation for budget and staff purposes, is the administering arm of the system that Act 250 established. The Board itself is composed of nine members, including a chairman, all appointed by the governor. Members serve for four-year terms, with the exception of the chairman who serves a two year term; five appointments expire in each off-numbered year; and members are compensated at the rate of twenty-five dollars per diem. Concerning Board composition, board members are not required to have any particular expertise; in fact, Act 250 does not specify that particular social or economic groups be represented on the Board. The seven environmental district commissions were established as sub-agencies of the Board. In other words, the Board sets policy and reviews appealed decisions of the district commissions. It is also responsible for submitting the two land-use plans to the Legislature.

The Board may appoint one full-time executive officer and other professional and administrative employees. The Board may also establish as many regional offices as required to administer the Act. For the Board's Rules and Regulations, see the Appendix.

The Board was appropriated \$147,000 for fiscal year 1972. Half of this is raised by means of application fees; the other half is funded by the legislature.

District Environmental Commissions

There are seven District Environmental Commissions set by the legislature each consisting of three citizens from the district appointed by the governor

for staggered four-year terms. The governor also appoints a chairman who serves a one-year term. All commissioners are paid on a per diem basis and no qualifications are imposed by law.

Under Act 250, most individuals wishing to develop or subdivide land must apply to a District Environmental Commission for a permit. Developments for which a permit is required include the following:

- (1) Construction of improvements on a tract or tracts of land owned or controlled by a common entity and involving more than 10 acres of land (one acre where the town having jurisdiction has not adopted zoning or subdivision controls) within a radius of five miles of any point on any involved land for commercial and industrial purposes;
- (2) Any construction of housing projects such as cooperatives, condominiums, apartments, or mobile home parks with 10 or more dwelling units and owned or controlled by a person within a radius of five miles of any point on any involved land;
- (3) Construction or improvements on a tract of land involving more than 10 acres which is to be used for municipal or state purposes;
- (4) And any development, regardless of acreage or the number of units involved, for commercial, industrial or residential use above the elevation of 2500 feet.

Specifically excluded from developments are:

- (1) Construction for farming purposes below 2500 feet;
- (2) Construction for logging purposes below 2500 feet;
- (3) Construction for forestry purposes below 2500 feet;
- (4) Electric transmission or generation facilities (power plant siting is regulated under Section 248 of Title 30.)

A permit is awarded if the development or subdivision is found acceptable in four major aspects:

- (1) No undue pollution of air, land, and water;
- (2) No unreasonable burden on municipal services, i.e., education, water supply, fire, police;
- (3) The applicant's proposal conforms to any duly adopted local, regional, and state plan;
- (4) And that the project "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas."

These standards for the district commissions' decisions are specified in Section 12 of the law. Applications may be denied by local district commissions if they find the proposed subdivision or development would be "detrimental to the public health, safety or general welfare," but the district commission must give specific reasons for the denial of the permit. The Environmental Board has authorized district commissions to refer to the model subdivision regulations of the Vermont Planning and Community Services Agency as a guide for decisions on permits. In the near future, district commissions will have a permanent Land Capability and Development Plan and then a permanent Land-Use Plan to use as one of the bases for their decisions.

To ensure enforcement and protect against unauthorized subdivision, Law 250 requires that the property transfer tax form, required with every property transfer in Vermont, must include a certificate of compliance with or exemption from both the Environmental Control Law and the Board of Health Regulations (See Appendix) which is signed under oath by the seller.

The law also provides for penalties including fines up to \$500 per day and/or two years imprisonment for violation of the provisions of the law. However, except for the transfer tax report for subdivisions, it is essentially self-policing relying on private individuals to report those developments which do not come to the attention of the state through application to other agencies. Complaints may be submitted to the county attorney or the county forester. County foresters have been designated as environmental officers who conduct investigative field work for the Agency of Environmental Conservation on proposed projects.

State Agency Review

The Division of Protection coordinates the Environmental Conservation Agency's review and comment process. The Division of Protection was designated coordinator, because it administers the air and water pollution control programs as well as the enforcement activities for all divisions within the Agency. Therefore, it has the broadest environmental perspective within the Agency and has the most interests that overlap with those of the 250 permit program.

The Division of Protection decides who will review the application within the Agency, directs special studies of the site if necessary, writes the Agency's official position paper on each application and represents the Agency in any hearings before the district commissions and Environmental Board.

However, the Division of Protection does not actually decide what the Agency's official position will be on an application. This is done by the Agency 250 Review Committee, an interdepartmental body consisting of

representatives from conservation agency departments and from other state departments (e.g., Highway, Education, Health). This committee receives both a copy of each application to the district commissions and the Division of Protection position paper and prepares a position paper representing the views of the Agency and all reviewing units. This document is presented to the district commission for its use in reaching a decision on the application. The goal is to provide the commissions with technical information they would not otherwise receive and to promote uniformity in their decisions.

250 Permit Application Procedure

Under Act 250 most individuals wishing to develop or subdivide land must apply to a District Environmental Commission for a permit (See discussion on District Commissions).

The district commission must hold a hearing on a permit application if requested to do so by anyone required to receive notice of it. This request for a hearing must be made within 15 days of receiving notice. The permit applicant is required to give notice of his filing to any municipality where the land is located, any municipal or regional planning commission affected, any adjacent Vermont municipality and municipal or regional planning commission if the land is located upon a boundary. He must also post a notice in the town clerk's office and publish notice in a local newspaper not more than seven days after the District Commission has received the application. Also, an adjoining landowner may request a hearing within 15 days of the newspaper notice. The district commission may also order a hearing on its own volition within 20 days of receiving an application.

Parties to a hearing are the municipality, local and regional planning commission, any state agency by means of the Agency 250 position paper, a

person receiving notice or an adjoining property owner. However, an adjoining property owner cannot be a party to an appeal.

If no hearing is requested or ordered, the Commission must act on the application within 60 days after the application is filed, or the application is automatically approved and there is no appeal. If a hearing is requested or ordered, it must be held within 40 days of receipt of the application. The Commission must issue its decision within 20 days of the final hearing day.

Appeals of district commission decisions can be taken to the Environmental Board; the statute limits the parties who may appeal to regional and municipal planning commissions and the municipalities required to receive notice. Once an appeal is taken, the Board is directed to issue notice to interested parties and to schedule a de novo hearing on all issues requested by any party. The Board makes an entirely new decision based upon the same criteria used by the commissions and makes its own determination whether to grant or to deny the permit. If any party to the appeal is still dissatisfied, the statute provides for a further appeal to the Supreme Court of Vermont. In the judicial appeal, no objection may be considered which was not raised before the state Board.

It is interesting to note that surprisingly few district commission decisions have been appealed suggesting that either developers are still reticent about criticizing decisions under Vermont's leading environmental law or that in general they are more satisfied with the decisions than is often thought (which may suggest that the decisions haven't been as stringent as some environmentalists would like).

The second section of Act 250 directs the Board and the District Commissions to prepare and seek adoption of three plans in order to manage

the state's land resources and guide growth.

- (1) Interim Land Capability Plan (Section 18): This first plan has been adopted and describes "in broad categories the capability of the land for development and use based on ecological considerations" The Interim Plan is an inventory of present uses of the land and of available natural resources and does not reflect policy decisions as to future land-use and development. This fact should minimize the importance of a statutory requirement that the later permanent plans may not be inconsistent with the Interim Plan. This plan is in effect until the adoption of the permanent Land Capability and Development Plan (See appendix.)
- (2) Capability and Development Plan (Section 19): The Act states the following about the Capability and Development Plan: "The Board shall adopt a capability and development plan consistent with the interim land capability plan which shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state, which will, in accordance with the present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of the inhabitants, as well as efficiency and economy in the process of development" This second plan is to reflect basic planning decisions governing the future development of Vermont. It is at this point that decisions as to the future location of industry and second-home developments, for example, will be made. Vermont is currently in this phase of planning.

- (3) Land-Use Plan (Section 20): The Land-Use Plan is to take the form of a map showing "in broad categories" the present and prospective uses of land, "the plans to be further implemented at the local level by authorized land-use controls such as subdivision regulation and zoning." The difference between the Capability and Development Plan and the Land-Use Plan is that the former is to be a detailed planning document whereas the latter is simply a map indicating the results recommended by the planning study.

Before final adoption of each of these three plans, the Board must hold at least one public hearing in each of the state districts; it must send each proposed plan to each municipal and regional planning commission for comment; the Board must give final approval; the document must be sent to the governor who has 30 days in which to approve or disapprove it, if he fails to do either, the plan is deemed approved; and, in the case of Sections 19 and 20, the plans must also be adopted by resolution in the General Assembly.

The responsibility for overseeing the completion of the Sections 19 and 20 plans rests with a state planning committee consisting essentially of the governor's cabinet with a state plan steering committee that includes the Secretary of Administration (Chairman), the Secretary of Development and Community Affairs, the Chairman of the Environmental Board and the Director of Planning (same person). The plans are prepared from the following general sources: 1) state government organizations including the planning office which has direct staff responsibility for the plan's preparation plus the Environmental Board and the planning division of the state agencies, 2) seven regional task forces consisting primarily but not entirely of regional planners,

- 3) private public interest groups (such as the Vermont Natural Resources Council), 4) the new governor's staff (arriving in November or December), and 5) District Commissions.

The Vermont Natural Resources Council has very actively tried to encourage broad citizen participation in the above mentioned planning process. It has received funds from the Ford Foundation for an audio visual presentation, "So Goes Vermont" and for EPIC, Environmental Planning Information Center, a Council sponsored project working to inform Vermonters about Act 250 and to stimulate broad citizen participation in the preparation of the Capability and Development and Land-Use Plans. Also, the National Science Foundation has given EPIC an 18-month grant to evaluate public activity in planning, especially the Act 250 planning process.

Following is an evaluation of Vermont's Act 250:

- 1) Act 250 has had no significant effect on the rate or amount of development and subdivision in Vermont, but the quality of such projects has improved. For instance, most projects are given permits with conditions attached.
- 2) Act 250 decisions have tended to rely on "hard data" rather than on the more substantive criteria provided in the Act. It's hard to make economic and environmental trade-offs when only physical criteria are used.
- 3) The administration of the act has become more centralized than originally intended, in part because of a failure of local and regional groups to become adequately involved.
- 4) There is still confusion in the Act as to the different levels of responsibility for regulation and planning of land-use.

- 5) Efforts to inform Vermonters of the nature and purpose of Act 250 have been inadequate. The Vermont Natural Resources Council is trying to correct this by stimulating broad citizen participation; however, it appears that new, wealthy residents are the most active and vocal.
- 6) All seven districts are interpreting Act 250 independently; therefore, there is little consistency from district to district.
- 7) Many developers feel that the law's application form is confusing and that the act will eventually eliminate the small and medium-sized developers who cannot afford the delays and paperwork required, i.e. 250 needs simplification. (See appendix for list of application forms.)
- 8) An important loophole in Act 250 is the exemption of subdivisions over 10 acres; this encourages 11 acre development. A new definition of subdivision would avoid this situation -- do not define in terms of acres.
- 9) Farming, logging, and forestry (under the elevation of 2500 feet) are exempt from Act 250's restrictions. These three industries have a great impact on Vermont's present and future development; how can they be excluded from an effective land-use plan?
- 10) Enforcement of Act 250 should be more thorough and systematic than the present self-policing and application system.
- 11) Vermont has a strong town meeting and selectman system, and the imposition of regions on this framework has not been very successful.
- 12) Presently, Vermont is experiencing a backlash phase as people, especially the business community, start to realize the economic costs of their environmental law -- the cost to existing industries to abate pollution, the cost of adequately administered pollution

legislation and the income lost by industry not locating in Vermont due to its strict legislation.

- 13) Act 250 does not provide the mechanism by which to make explicit economic-environmental trade-offs. In other words, it does not guarantee balance in land-use.

3. In order to solve its water quality problem, the Vermont General Assembly has made substantial revisions to the state water pollution control statutes (Title 10, Chapter 33, Subchapter 1, Vermont Statutes Annotated or Act 252). The amendments, most of which took effect on April 4, 1970, regulate or prohibit certain discharges which previously were permissible and impose certain responsibilities upon all persons discharging treated or untreated wastes into the waters of the state.

The first section of Act 252 deals with water classification of the state's waters and defines "waters" to include "all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the state or any portion thereof." The state adopted four water classifications ranging from Class A, suitable for public water supply with disinfection, to Class D, suitable for supporting aerobic aquatic life, for power, navigation and certain industrial process needs. No person without written authorization of the board can discharge into the waters of the state any waste which by itself or in combination with the wastes of other sources reduces the quality of the receiving waters below the classification established for them. The Vermont Water Resources Board, a quasi-advisory board to the Water Resources Department in the Environmental Conservation Agency, is responsible for classification of waters and may hold public

hearings as it deems necessary.

A Classification Advisory Council consisting of three residents or one for each ten thousand inhabitants, whichever is greater, from within the drainage area of the waters under consideration for classification is appointed by the Governor to assist the board in its classification procedures.

The Board may enforce a classification order against any person who has failed to comply with such an order by bringing a suit in equity before the chancery court of the county where the disputed waters are located (See Regulations Governing Water Classification and Control of Quality in the Appendix).

In addition to Classification of waters, Act 252 also provides that on and after July 1, 1971, no person will discharge any waste, substance or material (treated or untreated) into waters of the state without first obtaining a permit for such discharge from the Water Resources Department. All permits previously issued by the Water Resources Board were revoked on July 1, 1971.

Two types of permits are provided for in the statute:

(1) Discharge Permit: authorizes under very specific conditions discharge of waste which will not reduce the quality of receiving waters below the established classification. This permit requires adequate treatment of wastes.

(2) Temporary Pollution Permit: authorizes under very specific conditions discharges of waste which will reduce the quality of the receiving waters below the established classification in certain cases for the limited period of time necessary to design, construct and place into

operation a treatment facility or alternate waste disposal systems subject to payment of assessed pollution charges (each permit holder is put on a 3 year or 8-16 year abatement schedule). It is hoped that the imposition of pollution charges will provide an economic incentive for temporary pollution permit holders to comply with the requirements, conditions and restrictions of their permits.

Pollution Charges per Unit of Waste (Adopted June 29, 1972)

- | | |
|--|---------|
| (1) Per pound of biochemical oxygen demand discharged to the waters of the State | \$0.035 |
| (2) Per pound of suspended solids discharged to the waters of the State | \$0.025 |
| (3) Per 1000 gallons of liquids requiring disinfection discharged to the waters of the State | \$0.01 |

Currently, a one-year moratorium on fees has been declared; if a person falls off schedule, the system of fees is imposed.

The Department of Water Resources cannot issue temporary pollution permits without giving notice to the people resident in the drainage area of the receiving waters. In general, temporary pollution permits will not be issued to existing individual sources of domestic sewage where sub-surface disposal of sewage is the practical solution for the foreseeable future or for new sources of wastes where proper treatment should be provided as part of the project. (See Rules Establishing Pollution Charges and Restating Permit Application Fees in Accord With Title 10 in Appendix).

The department may revoke any permit issued by it if it finds that the permit holder submitted false or inaccurate information in his application or has violated any requirement, restriction or condition of the permit issued. Fines of up to \$10,000 and/or not more than 5 years imprisonment

can be imposed. Appeal of department decisions are to the Water Resources Board and appeals of these decisions are to the Court of Chancery.

Following is an evaluation of Vermont's efforts at improving the quality of its waters:

- 1) Act 252 endeavors to go a corrective, not a punitive route.
- 2) The state needs to give the voter an incentive to want to stop pollution.
- 3) Classification of waters is actually zoning; this should be remembered and its consequences calculated.
- 4) Since the effluent charge system was just initiated, as of yet there is no measure of its success. However, one state official pointed out that the state has not adequately funded the program.
- 5) There is much controversy concerning the system of fees for the holders of Temporary Pollution Permits. Some feel the charges should be based on the annualized cost of constructing or correcting the system; this charge, they feel, is a greater incentive.

Recommendations and Evaluation

Besides the above mentioned evaluations, when asked what Minnesota could learn from the Vermont "experience," the following suggestions were offered:

1. One suggestion was to forget about water quality as the basis for enforcement, because the level of water quality is a matter of personal preference and not a scientific absolute.
2. Have a statewide bonding authority for pollution control.
3. Put pollution control on a permit system and have visible authority figures.
4. Use agricultural districts for planning.

5. Have distinct criteria for evaluating development projects and operate within them.
6. Have a land use plan with legal backing and separate the rules and regulations from the land-use plan for litigation purposes. This land use plan has to be more than guidelines; it has to have zoning authority.
7. Strong regional governments should be established and accepted by the public before they are used as stepping-stones to land-use management.
8. All the planning for environmental management should be coordinated in one agency.
9. The methods by which to get active and broadly-based citizen participation have yet to be discovered.
10. Decentralized land-use control was a politically acceptable environmental control mechanism in Vermont where "grass-roots" participation is valued.
11. Perhaps the most to be learned from the Vermont experience is the importance of political timing and strategy when passing comprehensive environmental legislation.

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Vermont State Planning Office, An Analysis of Social and Economic Characteristics of Vermont, Montpelier, Vermont, June 1971.

INTERVIEW REPORT

DATE: Monday, July 17, 1972

INTERVIEWER: Vic Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Royal Bartlett Cutts

TITLE: Representative, Vermont House of Representatives; member, Gibbs
Commission; chairman, Natural Resources Committee

ADDRESS: Townshend, Vermont

TELEPHONE: 365-7508

FUNCTION: Background information on Act 250

SUMMARY:

1. 1969 - Gov. Davis appointed study group (no pay), recommendations incorporated into Act 250; impetus: unplanned development i.e. second homes, ski resorts, sewage probs; no opposition to task force; opposition to statewide zoning, so issued guideline for local areas.
2. Act 250 comments: state lands included; to change land use classification go to legislature.
3. Economic considerations: special trade-offs not made in law.
4. Power plant siting: no particular guidelines.
5. Land use plan: unless zoning, no teeth; need more than guidelines.
6. Economic development: problem is one of placement, encouraging condominiums.
7. Container tax: first law repealed, second killed in senate, third a compromise; Cutts wanted to set up incentive program for recycling -- 5¢/bottle.
8. Legislature: executive relations okay.
9. Citizen participation: only on commissions; can't bring class action.
10. Problem: need approval of many agencies.
11. Opinion: Act 250 might hurt older people who need to sell land; otherwise, hurts no one. Land values still increasing. NECESSARY: planned growth -- sewage, highways, open space, etc.
12. Miscellaneous: Governor traditionally appoints many people in Vt.; no strong local and county zoning tradition, but didn't want imposed standards, strong selectman and town meeting system.
13. Enforcement: complaints to county attorney, county forester.

RECOMMENDED FOLLOW UP: Act 91: guidelines for zoning by region.

INTERVIEW REPORT

DATE: 18 July 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Ken Senacle

TITLE: Executive Secretary, Environmental Board

ADDRESS: Montpelier, Vermont

FUNCTION: Board's administrator

SUMMARY:

1. Background;
 - 1964 Planning and Development Act: towns could form regional associations: policy statement;
 - 1968 amended: towns may band together, may pass by-laws, zoning guidelines for towns in regional planning associations; broad, general goals - no authority to implement plan, no central direction, lost credibility since regional commission members new, wealthy, etc.;
 - 1969 obviously not working; 50 of 246 towns had zoning. Couldn't handle development in southern Vermont. Town meeting could change zoning laws annually.
2. Environmental Board quasi-judicial:
 - duties: formulate state land use plans; rules/legislation for Act 250; appeal mechanism for regional commissioners;
 - funded: 1/2 by application fees, 1/2 legislature; receive \$146,000;
 - state plans: 13 man task force per district; interim plan used judiciously, don't want tied up in court.
3. Economic considerations
 - jobs for pollution trade-off not made; standards enforced;
 - large-scale employers not needed;
 - no zero-growth.

INTERVIEW REPORT

DATE: 18 July 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Robert Williams

TITLE: Secretary, Agency of Environmental Conservation

ADDRESS: Montpelier, Vermont

TELEPHONE: 828-3357

FUNCTION: Head of agency

SUMMARY: Effluent Law:

1. Administrative functions from Water Resources Board (WRB), to Agency of EC; WRB quasi-advisory.

2. Program: 1) new standards 2) invalidated all previous permits to 1971, July 1.

permit system: a) discharge permit, if met new WQ standards b) temporary discharge permit, if can't meet them, deadline to apply - July 1, 1972 - hardship findings put on schedule to abate in 3 years, or 8-10 years.

(controversy: mixing zone controversy) state can't fund adequately.

fee system: moratorium for one year on fees; if fall off schedule, WRB decides charges to act as incentive. Agency collects.

3. Goal: clean water by 1980.

4. No tax incentives for industry.

5. Each division autonomous, but overall agency provides services.

COMMENTS:

444,333 is population of Vermont.

80 million people within one day's drive of Vermont.

INTERVIEW REPORT

DATE: 13 July 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Tom Davis

TITLE: Planning Division, Agency of Environmental Conservation

ADDRESS: Montpelier, Vermont

FUNCTION: Information on planning inside agency of Environmental Conservation; works on recreational planning

SUMMARY:

1. People don't like outsiders doing planning (i.e. regional planning).
2. If outside planning, need public input, public contact.
3. Depend on standards for power plant siting.
4. No internal 102 statements. Environmental impact hard to determine.
5. Before central planning office, now each agency has planning division. State Planning is to coordinate, but hasn't yet. Crisis orientation functional planning. Re-organization difficult.
6. Need time to get things moving.
7. PPB: 5 year plans - for Federal projects.
8. Regional planning commission-representatives selected by selectmen. Regions set by legislature.

COMMENTS:

Leaving for job in Washington State.

INTERVIEW REPORT

DATE: Tuesday, July 18, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Harry Behney

TITLE: Assistant to the Director of Economic Development, Division of Development and Community Affairs

ADDRESS: Pavilion, 4th Floor
Montpelier, Vermont

TELEPHONE: 828-3211, Extension 3321

FUNCTION: Economic developer - selective solicitation of industry

SUMMARY:

252-Effluent Discharge Law

1. Type of industry soliciting: a) Small b) 99% local people employed
c) Cottage industries to increase rural income d) high pay scales
e) community should not depend solely on one industry for support as in Burlington - they also recognize high cost of social services.
2. Incentives: weak, revenue bond authority to help finance industrial building (already have 3 industrial parks)
3. Opposition: a) Common Sense Associates' main concern is economic and environment balance b) IBM newcomers do not want any change or development c) no organized zero growth in the state, should be industry though controlled d) a million and 1/2 dollars in interest per month is being lost due to nuclear generator holdup - no position on this.
4. Long-range planning initiated - have '73-'74 objectives, want to encourage in-state development by encouraging inventors.
-PPB effort in state - state planning will have the ultimate authority in coordination.
5. Funding - Economic Development is 100% state funds,
- Division of Development and Community Affairs funded by HUD
701 Community Affairs funding
6. Biggest problem with 250 is inconsistency - all districts independent.

COMMENTS:

Seemed low-key, new-line for economic development; new agency.

INTERVIEW REPORT

DATE: Tuesday, July 18, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: William Albers

TITLE: Director of Water Pollution

ADDRESS: 4th Floor, Environmental Conservation

2 Court Street

Montpelier, Vermont

TELEPHONE:

FUNCTION: Engineer working on effluent standard and charges, and power plant siting.

SUMMARY:

1. Viewed as a public works project that had to be kept on schedule, look for a corrective route rather than a punitive route.
2. Instead current charges, wanted charges to be based on the annualized cost of construction or correcting the system.
3. Forget about water quality as basis for enforcement.
4. Inhibit development by not permitting effluent discharge on any lake, stream, or pond except Lake Champlain and areas already polluted (Better to correct old areas than to rush into new areas - prevent urban sprawl).
5. "Pay to Pollute" misnomer.
6. Sewage treatment plants not taxed - the only economic incentive.
7. Relized classification of waters really zoning.
8. Need incentive for the voter to want to stop pollution, the alternative is specialization of sewage plants.
9. Need to educate the public - change attitudes.

COMMENTS: Engineer's point of view, likes to separate himself from economists.

RECOMMENDED FOLLOW UP:

Write to Edward Selig, Council on Law-Related Studies for copy of Conference on Effluent Charge.

INTERVIEW REPORT

DATE: Wednesday, July 19, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Arthur Gibbs

TITLE: Senator (State Legislature)

Chairman of Commission on Environmental Control

ADDRESS: Middlebury, Vermont

TELEPHONE: 802 - 545-2874

FUNCTION: Gave political setting and history to Act 250

SUMMARY:

1. First envisioned as very centralized with local branches, changed to local control to make politically feasible. Earlier environmental legislation was passed with Democratic governor and Republican legislature - a coalition - few straight party issues.
2. Two problems now in backlash phase - realize cost, and insufficient funds.
3. Legislature should monitor how districts are interpreting 250 document.
4. Legislature not realized what 252 was when passed it.
5. There are recommendations in Vermont to have a statewide bonding authority for pollution control because it's a statewide, not municipal problem.
6. With current mood of legislature it would be hard to pass a land use bill now; this year there will be a big fight on the land use plan and there will be an attempt to balance economic and environmental concerns.
7. Problem with EPC and HUD putting emphasis on regional governments when they have none - question whether to beef-up counties or regional commissions.
8. Changes in Environmental Legislation:
 - a. Loophole in 250 -- 10 acres subdivisions exemption;
 - b. 252 -- change money part already done;
 - c. guarantee balance in land use, using common sense; how it ties into land use planning.
9. Power Plant Siting - Public Service Commission takes environmental concerns into consideration.
10. Suggestions for Minnesota:
 - a. Put things on permit system and have visible authority.
 - b. Have criteria and operate within them and a land use plan with legal backing.
11. Previous Vermont bills:

Mobile Home - Snowmobile and ATV - Shoreland Zoning - Junk Cars -

Mr. Gibbs Interview

July 19, 1972

Billboard - Container Tax - Flood Plain Zoning - Land Dedication -
Natural Areas Act Chapter 155, Title 10

RECOMMENDED FOLLOW UP:

- Does Minnesota have statewide bonding authority for pollution control?
See Maryland, California, New York.
- Get Minnesota's Homestead Act
- Get Arthur Merckel's Notes

INTERVIEW REPORT

DATE: Tuesday, July 18, 1972

INTERVIEWER: Cynthia Whiteford, Nancy Onkka, Victor Arnold

NAME: Mrs. Margaret (Peg) Garland

TITLE: Director of Vermont's Natural Resources Council, Pres. of Women's League of Voters

ADDRESS: 25 State Street, 3rd Floor
Montpelier, Vermont

TELEPHONE: 299-9496

FUNCTION: She is also on the Environmental Board and is currently being labeled an avid Conservationist by the Common Sense, Associates.

SUMMARY:

-Interest Groups: a) Common Sense Associates
b) Ski developers

--The Council's Projects have been funded by:

1. Ford Foundation funded:
 - a) audio visual presentation, "So Goes Vermont" and
 - b) EPIC (Environmental Planning Information Center), A Council sponsored project working to inform Vermonters about Act 250 and to stimulate broad citizen participation in the preparation of the Capability and Development and Land-Use Plans.
2. NSF - 18 month grant newly funded to council and EPIC both are to analyze the mechanism for stimulating and evaluating public activity in planning, especially the Act 250 planning process.

-Law 250 - District Commission set-up with 10 criteria to use in evaluation of permit applications

1. Mixed effects;
2. 50 applications - small % turned down, most okayed with conditions;
3. Environmental Board has the Authority to revoke permits;
- *4. Needs simplification.

RECOMMENDED FOLLOW UP:

- New Hampshire Power Plant Siting Law
- Mr. Sullivan, New Jersey Environmental Agency
- Questionnaire Breakdown - will send to us

INTERVIEW REPORT

DATE: Wednesday, July 19, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Benjamin Partridge, Jr.

TITLE: State Planning Director and Chairman of the Environmental Board

ADDRESS: Pavilion, 5th Floor

Montpelier, Vermont

TELEPHONE: 828-3326

FUNCTION: Primarily responsible for developing state land use plan -- Land Capability and Development Plan

SUMMARY:

1. Land Use Plan Adoption Procedure:

- a. 1 task force per district -- 13 members, appointed by governor, not mandated by law.
- b. Public informational meetings -- 1 per district -- political tactic, info.
- c. Rough draft -- from Merckle, task forces, district commissions, agencies, input, etc.
- d. September 1, 1972 -- rough draft for printers.
- e. Public meetings (last public contract) on rough draft.
- f. Rewrite, send to new governor in Nov. or Dec.; then rewrite final draft.
- g. Send to legislature, approved as resolution -- all or nothing.

2. SPA (previously Central Planning -- reorganized 2 years ago):

-semi-independent, particularly from Budget;

-function of governor's office:

a) land use plan

b) crisis decision helping

-B.P.: SPA director, Board chairman should be two people -- conflict of interest

3. Land use plan:

-will balance econ. and environmental matters;

-rules/regulations, etc., not be included, so plan itself will not be basis for litigation.

4. Economic considerations:

-favors expansion, not new growth;

-hard to make trade-offs if only physical criteria are used.

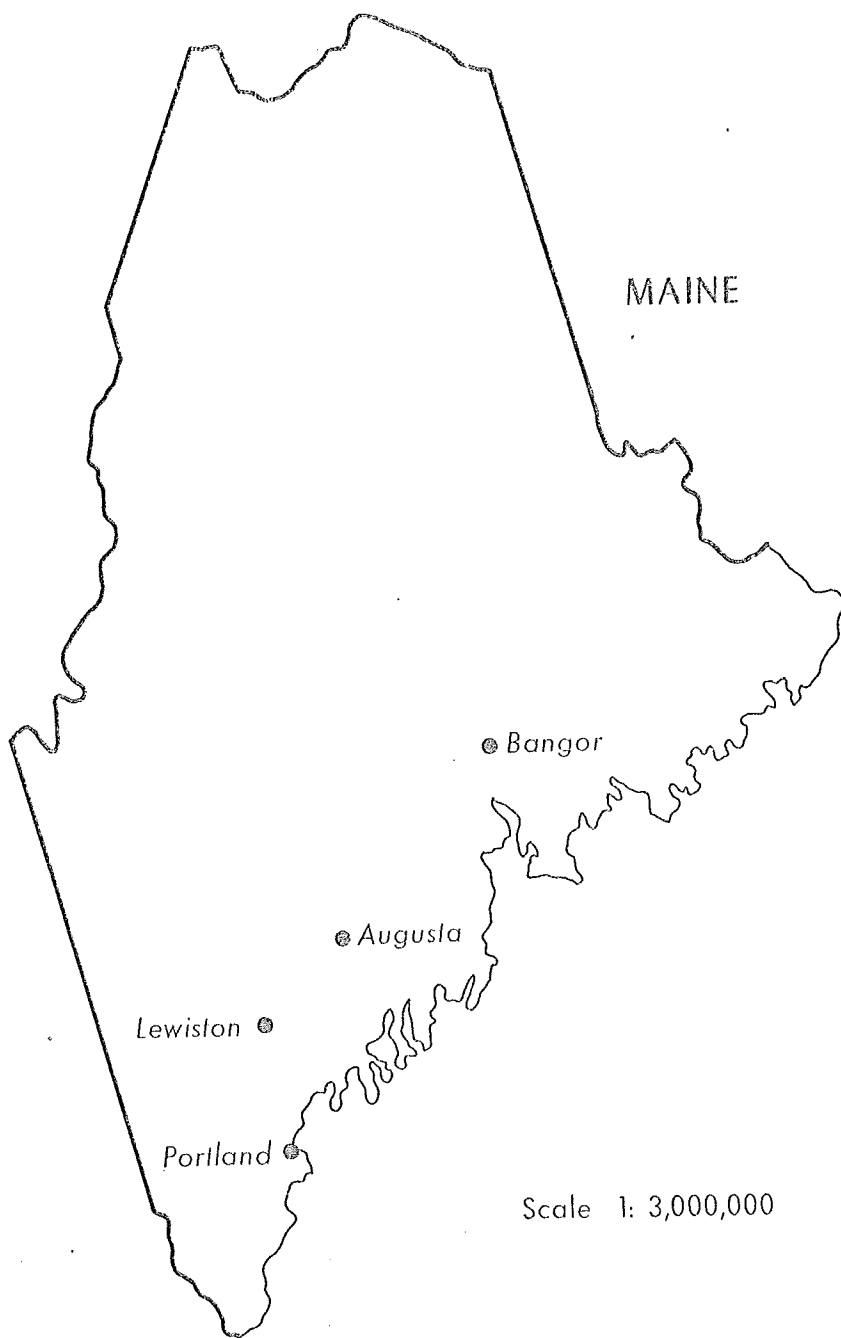
CHAPTER VIIMAINESTATE PROFILEPOPULATION AND GEOGRAPHIC FACTORS

Maine is the northernmost extension of the United States along the Atlantic coast. Its inland areas are very similar to those found in the northern part of Minnesota--heavily forested, with many lakes and streams, rough, uneven terrain, and thin rocky soil unsuited to extensive cultivation. Unlike Minnesota, Maine does have areas that can be called mountainous. The major difference between the two is Maine's location on the Atlantic Ocean, which has meant the development of a major shipping industry as well as an influx of tourists and summer residents.

The various indentations in the coastline inflate its straight line figure of 228 miles into 3,500 miles, of which less than 40 miles is available to the public. Maine has 12 of the 14 deep-water areas on the entire Atlantic seaboard that can handle the huge transoceanic ships planned for the future. The inland areas are primarily forested -- 27,000 square miles, or 87% of Maine, are considered either forest or wood lot:

<u>Land Use</u>	<u>Acreage</u>	<u>% of Total Land</u>
Forest		
Commercial	17,169,000	82.57
Non-commercial, productive	158,000	0.76
Non-commercial, non-productive	98,000	0.47
Water	926,000	4.40
Remainder*	2,441,000	<u>11.80</u>
		100.00%

*including forested private land and area classified as water by the federal government. New England itself is approximately 79% forested.



MAINE

The State
Size of Place
SMSA's
Urbanized Areas
Towns and Places of 2,500
or More
Counties

	Population											Households			Population in group quarters	
	All persons							Persons 14 years and over — Percent married		Persons 18 years and over — Percent male	Number	Percent change 1960-70	Persons per household	Number	Percent of total	
	Number	Percent change 1960-70	Percent Negro and other races	Percent under 18 years	Percent 18 to 64 years	Percent 65 years and over	Fertility ratio ¹	Male	Female							
The State	992 048	2.4	0.7	34.7	53.8	11.6	376	65.5	60.5	47.5	302 923	8.0	3.16	34 698	3.5	
SIZE OF PLACE																
Urban	504 157	1.4	0.9	33.0	55.1	11.9	357	63.5	56.4	46.1	157 075	5.8	3.05	25 633	5.1	
Urbanized areas	171 811	-2.9	0.6	32.7	54.4	13.0	359	64.7	54.8	44.7	56 381	1.5	2.96	4 880	2.8	
Central cities	129 266	-6.2	0.7	32.0	54.2	13.8	355	63.8	52.6	44.0	43 478	-1.5	2.88	3 846	3.0	
Urban fringe	42 545	8.7	0.3	34.8	54.7	10.5	370	67.6	61.8	46.9	12 903	13.1	3.22	1 034	2.4	
Other urban	332 346	3.8	1.0	33.2	55.4	11.4	355	62.9	57.2	46.9	100 694	8.4	3.09	20 753	6.2	
Places of 10,000 or more	148 161	3.2	0.8	32.9	55.5	11.7	359	62.0	56.1	46.3	45 263	8.1	3.06	9 435	6.4	
Places of 2,500 to 10,000	184 185	4.3	1.2	33.5	55.4	11.1	353	63.6	58.1	47.3	55 431	8.7	3.12	11 318	6.1	
Rural	487 891	3.3	0.5	36.3	52.5	11.2	397	67.4	65.2	48.9	145 848	10.6	3.28	9 065	1.9	
Places of 1,000 to 2,500	84 910	15.3	0.5	33.4	53.4	13.2	381	67.6	61.1	47.0	27 209	21.4	3.04	2 225	2.6	
Other rural	402 981	1.1	0.5	37.0	52.3	10.7	401	67.4	66.1	49.3	118 639	8.4	3.34	6 840	1.7	
STANDARD METROPOLITAN STATISTICAL AREAS																
Lewiston-Auburn	72 474	3.1	0.4	33.5	54.1	12.4	377	65.7	56.6	45.3	23 065	6.1	3.03	2 540	3.5	
Portland	141 625	1.8	0.6	33.5	54.5	12.1	347	65.9	56.5	45.1	45 512	5.7	3.04	3 376	2.4	
URBANIZED AREAS																
Lewiston-Auburn	65 212	-0.1	0.4	32.8	54.5	12.8	370	65.2	55.8	45.1	21 016	3.8	2.99	2 441	3.7	
Portland	106 599	-4.6	0.7	32.6	54.3	13.1	352	64.5	54.2	44.5	35 365	0.1	2.95	2 439	2.3	

Less than 625,000 acres, or 3.5% of the land, is owned by the state and federal governments. Of the 42% of Maine that is unorganized, 16 corporations and four families control 90%; these corporations are predominantly paper and lumber concerns in the heavily forested northern portion of the state. The total area of Maine is 31,200 square miles, larger than the other five New England States combined.

The 1970 census showed 993,663 inhabitants in Maine, a 2.5% increase in the 1960's; this is minimal compared to the 12% increase attributed to the New England region as a whole. The small increase reflects the outward migration of 70,000 from northern and western Maine to outstate areas; this number includes 14.9% of the residents in the 20-34 age bracket. The percentage of people over age 65 has increased one-eighth, to 11.4%; the comparable United States figure is 9.5%, the New England figure 10.6%. These population trends will mean a declining share in federal grants and loans, since these are distributed according to the relationship of the state population to the total national population. In addition, a growing percentage of Maine's residents are living on fixed incomes and would not be concerned with the same issues that would affect industrialists and younger residents.

Maine residents hug the shorelines; one-half live in the eight coastal counties, one-third along the fall-lines of the great river valleys of the Androscoggin, Kennebec, and Penobscot. An instate migration to the industrial areas in the southwest counties continues; the reason is quite evident: 139 coastal towns occupy 13% of the state's area, have 45% of the population, and receive 57% of the state's payroll. This move to the cities has been slow, for even now Maine is only 50.8% urban.

ECONOMIC FACTORS

Maine's economic situation reflects the basic characteristics of the state. The industries of lumber and paper in the north, recreation, shipping, and manufacturing in the southwest, and, surprisingly, the three levels of government are the major employers. The complete lists of source of employment and source of personal income for 1960-69 are included in the appendix, but a few pertinent figures will emphasize their relative importance:

1. Lumber and paper. In 1970, 35% of the value of all products came from forest products. The pulp and paper industry was responsible for 25% of Maine's jobs and 30% of the state payroll. Forty percent of the towns are dependent upon wood-related industry for income and employment.
2. Recreation. \$104,000,000 in personal income came from recreation outlets in 1969. A total of \$262,000,000 came from recreation-related firms. Total personal income from Maine in 1969 was \$2,987,000,000. Maine is within a one day's drive of over eight million people.
3. Shipping. The petroleum industry depends upon the ports for its existence. It employs one-half of one percent of the labor force, yet pays \$30,000,000--6% of wages and salaries. Petroleum products account for an average of 91% of the tonnage at the three largest ports. The value of products shipped yearly has been \$541,000,000.
4. Manufacturing. Various manufacturing concerns employ roughly one-third of the labor force, and pay about one-third of the wages and salaries. For these figures to balance, some industries must pay low wages to average with the high wages previously mentioned. This

underlines the fact that Maine has an attraction for industry because of its low labor costs:

1969 Hourly Wage Figures

United States	\$3.19
Connecticut	3.28
Maine	2.55
Massachusetts	3.04
New Hampshire	2.61
Rhode Island	2.69
Vermont	2.76

5. Government. Government is second only to manufacturing concerns in the amount of wages and salaries it disburses. In 1969 the three levels of government contributed one-fifth of the wages and salaries.

The growth rates for these industries can be determined from the lists previously mentioned. Agriculture follows the national downward trend, but the textile and shoe manufacturers are leaving to take advantage of the even cheaper labor in the South. Many of the paper mills are old and inefficient, forecasting their eventual shutdown in favor of newer, more centralized facilities. Most small Maine towns have served as the labor pool for one particular plant; the removal of this plant will thus have substantial effects on the financial state of the town. The electronics industry has taken advantage of low labor costs and female labor, and is expected to become a major employer. The other manufacturing industries are expected to continue steady growth.

Two particular industries are expected to increase rapidly. The first is recreation; preliminary studies have estimated that the amount spent by tourists should increase from the \$104,000,000 in 1970 to \$200,000,000 in 1980, to \$380,000,000 in 2000. Recreation-related firms should grow to

the same extent. Depending upon the development of the super-frigates and the decisions made by the state of Maine, shipping may increase with related transportation networks subsequently being established. In addition, land values and property valuations are expected to rise dramatically, as wealthy out-staters purchase land for second homes; 35,000 of the 78,000 vacation homes are now owned by out-staters. A study group directed by Ralph Nader has found that International Telephone and Telegraph has been very quietly purchasing thousands of acres in northern Maine.

As a whole, the State of Maine has experienced a growth in Gross State Product that is less than the New England area. Maine had a 53.1% increase from \$2,093,000,000 in 1960 to an estimated \$3,200,000,000 in 1970; New England itself increased 75.2%. The Maine GSP is 6.9% of the New England total. Estimates for future growth show either continued slow growth or a boom situation dependent upon the previously mentioned factors; no one is certain yet which situation will occur.

Unemployment has decreased since 1960; figures from the Maine Employment Security Commission are not consistent, so more accurate figures are shown below:

<u>1960</u>	<u>1965</u>	<u>1968</u>	<u>1969</u>	<u>1970**</u>
7.4	4.9	4.1	4.6	4.2

In some counties, particularly the northern and eastern counties, the 1970 census data shows unemployment rates as high as 6% and 7%. The last survey of occupations by county to determine unemployment showed

**United States Census Data

that unemployed males were operatives, craftsmen, foremen and laborers, and unemployed females were operatives and clerical workers.

The United States Department of Labor, Manpower Administration, reported seven areas with persistent unemployment, and twelve with substantial unemployment; these mean a 6% rate of unemployment, lasting for a certain number of years in the former category. These areas are primarily located in the northern areas of the state. Underemployment figures on the basis of insufficient wages are somewhat expressed in the fact that 13.9% of Maine households are below the national poverty line.

State officials have recognized the problems that Maine presents to industrial development. Its isolated location makes marketing difficult, and the labor available is typically non-skilled, non-mobile, and over-45. The industries that have taken advantage of the cheap labor and the natural resources have not brought new skills or opportunities for promotion. The result has been a weak tax base.

"We will talk to anyone willing to make a capital investment in Maine," states Dick Kelso, director of the Division of Development in the Department of Commerce and Development. Maine is seeking industries that will increase per capita personal income without causing serious damage to the environment. This involves competing with 49 other states for the 26 growth-oriented, non-polluting, high-paying industries. The electronics industry now developing is one such industry, although it has been capitalizing on the cheap labor and availability of women laborers. It is a fact of life--Maine needs industry money to survive.

Maine's coastline is the center for economic activity, and it is here that Maine must make a choice. To take advantage of the recreational

opportunities and the recent efforts in aquaculture, the coast must be relatively free from environmental degradation. Yet it is along the coast that most industrial development has taken place. In particular, the petroleum industry would seem to be incompatible with any lobster-farming or similar aquafarming.

The environmental legislation recently passed gives an indication of the nature of development desired in Maine. As Mr. William Adams, head of the Department of Environmental Protection, said, "if the industry cannot afford pollution control devices, it is not an asset to the state." But resentment at the new state-imposed regulations, particularly zoning attempts, is wide-spread among industrialists; they continually express the fear of being driven out of business by the costs of environmental planning and installation of pollution control measures. In addition, they resent outside intrusion into what they have always considered private matters.

Substantial degradation has occurred along the coast; water pollution, strip development, and poorly planned residential and vacation land are present. The areas around cities, particularly Portland, contribute greatly to the pollution load with sewage and industrial effluent. Costs of restoring water quality alone is estimated to be \$245,000,000 for 1970-75.

POLITICAL FACTORS

The Maine legislature is moderately conservative. The Senate has 18 Republicans and 14 Democrats; the House has 80 Republicans and 71 Democrats. The districts vary widely in population, for recent reapportionments have not yet reflected the population growth in the southwest and the decline in the north.

While the legislature has been very aware of the need to develop economically without irreparably damaging the environment, the governor played a more direct role in the procedure to set up the present environmental mechanism.

The background is this: in the late 1960's Maine suddenly realized the vulnerability of its forest, coast and shoreland to unplanned and minimally regulated development. Petroleum companies interested in using the deep-sea ports began to plan oil import operations and related refining activity in areas without local zoning restrictions. The coastline was no longer easily accessible to the residents because of the influx of tourists and summer home owners. The result of the apparent invasions "by land and by sea" was a package of legislation containing the Site Location Act, the Coastal Conveyance Act, an Act revising the Maine Land Use Regulation Commission, and a Bill Providing for State Level Land-Use Controls--Mandatory Zoning and Subdivision Controls for Shoreland Areas.

Governor Kenneth M. Curtis gave the major impetus to the passage to the bills. A task force appointed by Governor Curtis wrote the Site Location bill; bipartisan support was sought and sponsorship of the bill given to the Republican majority even though the governor was a Democrat. The Site Bill was one of three proposed during the 1970 special session, the second being a moratorium on all development, and the last a stop-gap measure; the governor's bill thus appeared the most feasible. One drawback of this crisis orientation is that the bill was poorly written; the legislators, eager to adjourn, did not completely consider its implications.

Major concessions were granted to the powerful industries and electric power industries through specific exemptions and a "grandfather" clause that excused them from the provisions of the bill. Maine citizens and particularly members of the influential environmental group, the Maine Resources Council, lobbied for the bill. The governor indicated that he would veto any substantive amendments or contrary bills, and the bill passed overwhelmingly in January, 1970.

In addition to seeking the passage of the environmental legislation, Governor Curtis has moved to make the administration of such business easier. He backed the reorganization of Maine's 226 agencies and boards into 11 departments and offices, including a Department of Environmental Protection. He issued an executive order directing that the Regional Planning Districts be used to provide integrated planning for the very loosely organized local units. His re-election stand in 1971 emphasized that he would continue to veto attempts to weaken the environmental legislation. There is a pro-development attitude in the governor's office, as long as the final authority rests in an agency with a strong environmental viewpoint.

STATE REACTIONS TO ENVIRONMENTAL PRESSURES

Problems

The combined effect of several factors made imperative a new mechanism for environmental decision making:

1. Maine's inability to control development. Zoning laws, the traditional means for such regulation, had been enacted by less than 80 of the 495 local governments; subdivision controls were even less widely in

effect. The emphasis on local controls was questionable, since 450 of the local units had less than 5,000 people, with no staff or fiscal resources for zoning.

2. Strong industries were not accustomed to outside interference of any sort.

3. Disorganized government. Maine's 226 autonomous boards and agencies could not provide consistent decision-making or co-ordination of efforts; it was difficult to carry out policy and pinpoint responsibilities.

4. Lack of co-ordination between the three levels of government.

5. Need for non-agency, non-board input to the decision-making process.

6. Need for a data base for making decisions. Maine had several varying lists of the number of local governmental units.

7. Need for a long range land-use plan.

8. Need for enforcement of the existing environmental standards.

9. Need for economic development to improve Maine's financial state.

Solutions

Maine responded with a series of steps that were to help in the solution of these problems:

	to meet problems:
1) Site Location Law	1,2,4,5,8,9
2) Land Use Commission Revision	1,2,7
3) Coastal Conveyance Bill	1,2
4) State Level Land Use Bill--Mandatory Zoning	1,2,3,7
5) Governmental Reorganization	3,4,5,7
6) State Planning Agency	4
7) Regional Planning Districts	3,4,5,7
8) State equivalent of the Federal Circular A-95	3,4
9) Coastal and Recreation Plans	7
10) Informational Systems--MIDAS, ELIAS	6
11) Use of Consultants' Reports--ESCO, etc.	6,7

12)	Expanded Enforcement Authority of the EIC, LUC	8
13)	Agency Review of All Permits	5,8
14)	Change in Philosophy for Economic Development	9

1) Site Location Law. By requiring large developments to be certified with a permit from the Environmental Improvement Commission (EIC), this bill gives the state a chance to inspect major projects before their construction. Information requested on the twenty-five page application form forces the developer to submit data on social and economic effects as well as on the environmental impact. Nine state agencies, the regional planning commission, and the municipal officers all review the applications, commenting upon the areas of their expertise. Conditions may be placed upon the approval of a particular site to ensure that the impact upon the surrounding environment is minimal. If the impact is adjudged too serious, the Commission can refuse the permit; its decisions may be appealed directly to the State Supreme Court.

Amendments to the bill in the 105th legislative session eliminated some of the weaknesses. The initial bill covered only commercial and industrial developments. Recognizing that any large-scale development can cause significant secondary effects, the Legislature included state, municipal, quasi-municipal, educational and charitable developments in the provisions of the bill. Since projects under 20 acres in size are not covered, slow subdividing of large tracts of land could escape scrutiny. Now land of more than 20 acres subdivided into five or more lots during a time-period of five years must be certified if one lot is less than 10 acres. State highways are still exempt. In addition, developers must "maintain the financial capacity and technical ability to satisfy the state's water and air quality standards during the entire construction of the project."

Two major housekeeping changes were instituted. The Commission could not adequately consider the application in the 14 day time period, so the bill now allows 30 days. Hearings are now called only when a developer documents his objections to a Commission ruling, citing the basis for such objections and the decision he desires; this frees the Commission from the workload associated with calling hearings for each permit denial.

The bill is poorly drafted, but proponents are afraid that if it is opened up for rewriting, a counter-reaction might force major changes. Furthermore, if the bill is clarified in the Legislature, the court will assume different original intentions, and decide the pending law suits against the Environmental Improvement Commission.

Since Maine has experienced the down trend in industrial projects associated with the recent economic recession, the impact of the Site Location Law has been limited to review of a few major developments, particularly those of the petroleum industry. However, a counter-reaction has set in, particularly among those groups that could be most affected by the requirements. The Homebuilders Association and Realtors Association lobbied against the bill before its passage, citing the financial burdens imposed if the proposed planning procedure and the standards were followed. Persons connected with other industrial and financial concerns have also realized the economic implications of EIC actions. The newly-formed Rural Landowners Protection Association--ostensibly composed of individuals, yet apparently heavily influenced by the paper industry and realtors, has been concerned with the Law's effects on individual landowners.

The following aspects of the Site Location Law have proved favorable:

1) It stresses the need to consider the effect of developments upon the natural and social environments, stating that "the location of such developments is too important to be left to the determination of the owners of such developments." Furthermore, it provides a set, functioning mechanism to take action upon this concern.

2) It allows some control over the location of major developments, which will be useful if and when a state land use plan is made. Thus, Maine as well as industry has some influence on the future picture of the state.

3) It stops fly-by-night speculators, by providing for public hearings and by requiring reviewal of the plan that will actually be used.

4) It prevented the oil companies from coming in.

5) The many facts required in the permit application force a more sophisticated level of planning, resulting in projects that are more adequately planned.

6) The review of each permit application by the various state, regional, and local entities allows the enforcement of standards previously considered "goals." For example, the Soil and Water Conservation Commission can ensure that its minimum soil standards are met by simply commenting upon additional measures needed. The EIC can then attach this comment as a condition to the permit.

7) The review process also allows the viewpoints of many agencies to be expressed on a single project, resulting in some inter-agency contact.

8) The ability to attach individualized conditions to the approvals gives desirable flexibility to the site approval process. In this manner the unique characteristics of small land parcels can be considered, for set categories would not accurately assess the varying land and water types and economics and social attributes present in Maine.

The following aspects of the Site Location Law have proved unfavorable:

1) It is a bill of reaction, rather than being one of initiative.

To allow the state the control it needs to direct Maine's growth, the guidance of a state land plan is needed.

2) The mechanism it establishes is regulatory rather than planning, and so tends to be rather rigid.

3) It is poorly drafted, resulting in questions of legal interpretation.

4) As the major environmental mechanism, it does not allow sufficient opportunities for interplay of economic and environmental questions. This is one reason for the formation of the counter-reaction.

5) The permit system itself is administratively too complex, for too many steps must be taken during the application process. The EIC cannot suggest or evaluate alternate sites, so the resulting decision is very specific and incremental in nature. Because there is no field staff, enforcement of permit conditions is very lax.

6) The "grandfather" clause provides a loophole for those industries and municipalities--especially the forest products industry--that operate with permits issued under looser restrictions. Other exemptions forestall regulation of the public utilities and of small developments such as strip development.

7) The other agencies that review permit applications received no additional funds for this purpose so they must somehow find the money in their current budgets. This would limit the thoroughness of the reviewal process.

8) Budget limitations have meant that the law has been administered selectively, in cases where "significant impact" is forecast. This limits the scope of the law.

2. An act Extending the Jurisdiction of the Maine Land Use Regulation Commission, June, 1970. This act gives to the L.U.C. planning, zoning and subdivision controls of all unorganized and deorganized areas of the state, except Indian reservations--51% of the land in Maine. Lands will be classified into protection, management, development, and holding districts, with standards set for each type. All development must be approved by the Commission, if it does not come under the EIC's jurisdiction because of the Site Location Act. Since the Commission also formulates a general plan for the land, it is a planning board in addition to being a regulatory agency.

The following aspects of this act are favorable:

1) It provides for a comprehensive land use plan that will act as a guide for the standards and classifications established for the areas.

2) It gives responsibility for development approval to an agency other than EIC, relieving the workload of the EIC.

3) It gives the Commission broad jurisdiction for planning and regulation; although this might be seen as a conflict of interests,

it does give the Commission sole administrative control of the areas, cutting down on the bureaucratic red tape.

4) The boundaries of the four districts are determined by their social and economic patterns as well as the physical characteristics, increasing the flexibility and accuracy of plans based on the districts.

5) An application fee pays at least a portion of the administrative costs.

The following points are not as favorable:

1) The Commission is composed of three people concerned with the forest products industry and three "other" members; the seventh member, the Director of the State Planning Office, often has the swing vote on matters concerning use of forest land, which is most of the land in the unorganized and deorganized townships. Thus the law has established a conflict situation in which to administer a very important function.

2) The forest industries, agriculture and the public utilities all received major exemptions from the bill, although these were partially limited by the standards that are being used.

3. Coastal Conveyance Bill. This bill sought to regulate the existing petroleum development. It prohibits any discharge of oil, petroleum products, or their by-products into coastal waters or waters that drain into coastal waters. A Coastal Protection Fund was established from license fees paid by operators of facilities that transfer, process, or refine oil; this fund pays the cost of removing any oil discharges from the waters. If one person who discharged the oil unlawfully is found and tried, the state does not have to establish neglect; proof of the prohibited discharge or other polluting condition is sufficient.

4. State Level Land-Use Controls--the Mandatory Zoning and Subdivision Control for Shoreland Areas. This bill, passed in June, 1971, covers all land areas that are even partially contained "within 250 feet of the normal high water mark of any navigable pond, lake, river or salt water body." Municipalities must adopt sufficiently stringent subdivision and zoning control ordinances for these areas by June 30, 1973, or this power shall revert to the Environmental Improvement Commission and the Maine Land Use Regulation Commission. This forces the adoption of zoning restrictions, yet it might result in duplication of state efforts by the local units.

5. Governmental Reorganization. In the 105th legislative session and special session in 1971, Maine's state government was reorganized. The 226 autonomous agencies and boards were co-ordinated into 11 departments and offices. Those functions concerning the environment were placed into the Department of Environmental Protection, in an effort to establish definite lines of responsibility and action. The DEP therefore serves as a mechanism of administrative co-ordination and services for the various environmental activities, including air, water and land quality control. It contains three major environmental agencies-- the Environmental Improvement Commission, Land Use Regulation Commission, and Site Location Bureau. Each agency receives administrative services from the DEP, but maintains the authority to make decisions.

Environmental Improvement Commission

The EIC is made up of ten members appointed by the governor to a three-year term. Law requires the membership to be of the following composition: two representatives each for manufacturing interests, conservation interests, and municipalities, and equal numbers of air pollution experts and the general public; this will theoretically provide an input for the varying attitudes present in Maine. The Commission members are paid \$10.00 each day they serve at Commission Functions, plus expenses. The budget for 1970-71 was just over \$1,000,000.

The EIC itself was established in 1941. It received substantial authority in 1964 to monitor and enforce standards for air, water and coastal flat lands quality. In 1970 it was given the additional responsibility to administer the Site Location Law.

The Site Location Law directs the EIC, in consultation with appropriate state agencies, to control the location of those developments substantially affecting local environment in order to ensure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings.

Developers whose projects are covered by the law submit the completed application to the Commission, which is legally required to act on the application within 30 days. Specifically considered are the four criteria mentioned in the law:

- 1) Financial capabilities to meet state air and water quality standards, provide for solid waste disposal and ensure sufficient water supply.

2) Traffic movement of all types into or out of the development area provided for.

3) No adverse effect on natural environment, including existing uses, scenic character or natural resources.

4) Soil types will be suitable to the nature of the development. The developer assumes the burden of showing that his planned construction will not disturb the environment or pose a threat to the public's health, safety, or general welfare. The Commission, which has no investigatory staff, relies upon the application and the comments of other state agencies for the information it needs to make a decision.

The Commission can impose conditions upon a permit; these can be sufficiently stringent so as to make the development unfeasible. Conditional approval has been used more often to force consideration of unique attributes of the proposed sites--soil type or aesthetic effects, for example. Standard conditions attached to every permit limit the project to the scope described in the application, require that the necessary additional licenses be obtained, and request that future information desired by the Commission be furnished.

This application process ensures the co-ordination of the policies of various state agencies; each application is formally reviewed by designated persons in the Soil and Water Conservation Commission; State Highway Commission, Division of Sanitary Engineering, State Planning Agency, Department of Sea and Shore Fisheries, Department of Inland Fisheries and Game, Forestry Department, Park and Recreation Commission, and the LUC.

Additional information comes from the regional planning commission and the municipality affected. Conflicts in the reviewing agencies are resolved at least as far as that particular project, for the Commission surveys the statements and makes the final decision. Since all governmental projects of sufficient scope are now covered by the law, the EIC may prove to have considerable powers for review of their activities.

If conditions of the permit are violated, or if a permit is not first obtained, the EIC may request the Attorney General to enjoin the developer. The Attorney General can also bring a civil action within 30 days if the EIC so desires. Interestingly, the EIC can order that illegal development be removed, with the site being restored as near as possible to its original condition.

Hearings conducted by the EIC may be requested within 30 days after the order is issued, if one was not held before the decision. The hearing just covers the objections stated in the request, with the Commission again issuing an order. Decisions may be directly appealed to the Maine Supreme Court. Here the provisions of the Site Law are not clear, for it gives the Court the power to comment upon the decision and to determine if the Commission acted within its authority by reviewing the written record. On questions concerning action taken without a hearing, or questions about whenever the development is indeed included in the law, no definite instructions are given. The Court, in King Resources versus EIC held that it could review appeals even if hearings have not been held. The importance of the EIC is apparent, for the chairman of the EIC is also the Director of the new Department of Environmental Protection.

SITE LOCATION BUREAU of the EIC

The Site Location Bureau, or Land Quality Bureau, handles the actual processing of the applications. With the 30 day schedule now in effect, the developer need submit sufficient copies of his plans only to the Bureau, which then distributes them to the appropriate state and regional agencies.

Comprising 25 pages, the application form asks for information on the financial and technical capability of the developer, the legal history of the proposed site, the estimated use of the site, community and utility services required, social and ecological impact of project, additional legal authorizations needed, site descriptions, current land and water use at the site, cover and terrain characteristics, drainage characteristics, soil types, corrective work needed on the site, adequacy of water supply and waste discharge, and descriptions of access and circulation patterns; even the type of advertising signs to be used are covered. Unlike most environmental impact statements, this application requires factual answers--answers that then must be used in the actual project.

Since the Bureau had enough money in 1971 for only two staff members, its ability to review all developments is curtailed. The staff limitation also cuts down its ability to see that the plans submitted in the application form are followed correctly.

LAND USE COMMISSION

The L.U.C. has very complete jurisdiction of the 51% of Maine .

that is deorganized or unorganized; these areas are primarily in the northern part of the state. The State Planning Office Director, Forest Commissioner, and the Director of Parks and Recreation are permanent members of the Commission, with the Governor appointing four members serving staggered four-year terms; these last members represent "the public, conservation interests, forest products industry interest and general consumer interests." They receive reimbursement only for expenses. The administrative staff of the L.U.C. is as small as the budget.

In the unorganized and deorganized townships, the L.U.C. has the following functions:

- 1) Classification and districting of lands. The L.U.C. designates each area into a major district classification and assigns standards for the development in each district; interim standards have been recently adopted, reflecting the types of development desired in the protection, management, holding and development districts. Social and economic effects are considered in these classifications. If the land is organized, the L.U.C. standards remain in effect until the new municipality adopts standards no less stringent.

Agricultural lands and current single-family residences are exempt from the land use regulations. The major exemption, though, is allowing the powerful forest products industries to cut crops, construct roads and buildings and operate machinery without restriction in the management districts. Public utilities and other public service activities may be

exempted by the decision of the Public Utilities Commission following a hearing.

2) Development review and approval. A permit is required for constructing or remodeling any structure, and developing any subdivision or development. If the plan meets the appropriate land use guidance standards, that is prima facie evidence that such development will meet requirements of the Site Location Law, unless the EIC has set more restrictive standards. (An application fee will help with the administrative costs). Civil penalties are limited to up to \$500 per day for each day of the violation. Until more needed information is collected, areas can be put into protection districts, and timber cutting can be regulated in three of the four districts.

3) Comprehensive land use guidance plan. By July 1, 1973, 10½ million acres must be zoned, including 460 townships. Rather than establishing final uses, the plan will outline the process of change. Regional planning commissions and the State Planning Office must be consulted and the governor must approve the final plan.

Commission decisions may be appealed directly to the Supreme Court, again to review the hearing and the Commission decision. Hearing procedures are provided for in the statutes.

6. State Planning Office. The SPO was made responsible for the reorganization of the state government. Recently the staff, operating on a limited state budget and some federal planning funds, has been researching and preparing a coastal plan and a recreation plan. To establish a

computerized information system in the natural resources area, the SPO is assisting two state departments in developing MIDAS, an inter-agency data flow network, and ELIAS, a processing and analyzing data system. Although the SPO is specifically designed to co-ordinate the departmental activities, it has been more concerned with the other areas of planning.

7. Regional Planning Districts. The eight major drainage districts serve as the boundaries for the Planning Districts, to provide areas small enough for significant local action and large enough to adequately ensure planning and administration. In an executive order on January 26, 1972, Governor Curtis detailed the boundaries of such districts and ordered all state agencies to use them as a basis for planning and action. The Department of Commerce and Industry has refused to do so, and other executive departments have been lax in submitting their district-based plans to the SPO as required.

To force compliance of the state agencies and the local municipalities, which join the districts voluntarily, the SPO is depending upon federal circular A-95 and the acceptance of the state districts by the Federal Regional Council; federal funding can now be allocated through regional governments.

Philip Savage, Director of the State Planning Office, stressed that efficient planning requires consistent area definition, or at least 60% of the programs using the same functional and geographic lines.

8. State equivalent of the Federal Circular A-95. To facilitate the use of the regional planning districts, Governor Curtis has ordered

all state agency plans to be based on the districts, as discussed with the regional planning districts.

9. ELIAS and MIDAS informational systems. These are discussed with the State Planning Office.

10. The coast and recreation plans are discussed with the State Planning Office.

11. Consultants' Reports. ESCO Research, Inc., and the Edward C. Jordan Co. have submitted detailed analyses of Maine's future investment needs and water resources plans respectively. These reports give an evaluation of the current status of the area and projections for the future, adding greatly to the information available for use in decision making.

12. The expanded enforcement capabilities of EIC and LUC are discussed under governmental re-organization.

13. Agency review of permits is discussed with the EIC under governmental reorganization.

14. Change in economic philosophies. The Department of Commerce and Industry is now promoting selective growth of light industries, rather than growth per se. The environmental emphasis at the last legislative session almost resulted in the disbanding of the department; as it did happen, the budget was cut severely. Environmentalists express their concern at economic development occurring without the guidelines that would be contained in a state land use plan.

RECOMMENDATIONS AND EVALUATIONEnvironmental Mechanism in Maine

The following aspects of Maine's environmental mechanism should be commended:

1) The reorganization of the state government, in an attempt to put related activities together, simplify administrative procedures, and establish lines of responsibility.

2) The use of Program Planning and Budgeting, in which the budget is allocated according to programs rather than function. This allows priorities and dimensions of agency activities to be easily discerned.

3) The establishment of the two information systems, MIDAS and ELIAS, to provide enough data for accurate and comprehensive planning.

4) The responsibility of the Land Use Commission to establish a land plan for half of the state. This can be considered a preliminary step to a state land use plan.

5) The ability, through the permits granted under the Site Location Law, to control at least the location of the development.

6) The necessity to incorporate sound, comprehensive planning in the development, again through the permit system.

7) The opportunity for many agencies to review development plans and suggest the improvements and refinements they consider necessary.

8) The overwhelming popular support of the Laws.

The following weaknesses in the environmental mechanism are apparent:

1) The Site Law is too rigid, too incremental in nature to serve as the major environmental mechanism. A state land use plan is needed to give the framework within which to place the individual decisions.

2) Economic considerations are not considered at the planning stage. The tax exemption of pollution control equipment is currently the only formal cognizance of such considerations.

3) The State Planning Office has not yet begun to coordinate the activities of the other state agencies, resulting in interagency impasses, inefficiency, and duplication of efforts. The SPO has instead been concerned with developing specific plans.

4) The weak tradition of township and county government and the difficulty experienced in implementing regional government has hampered co-ordination of the activities of the three levels of government. If the local and regional levels now begin to take previously neglected prerogatives such as zoning powers, they will duplicate the efforts of the State government.

5) With two agencies--the Site Location Bureau and the Land Use Commission--administering the act, and one--the EIC--advising, and with state, regional and local entities reviewing all permit applications, administration is an endless task.

6) The loopholes discussed previously exempt some of the most important uses of land from the provisions of the Laws.

7) The limited budget for investigation, enforcement and administration limit the effectiveness of the provisions of the Laws.

8) The counter reaction due to the slighting of economic considerations in the laws may prove harmful to the environmental legislation.

Recommendations for Minnesota

Minnesota might well assimilate the following lessons from the Maine experience:

1) In the environmental mechanism that will be established in Minnesota, provision should be made for:

a) Co-ordination and co-operation of the three levels of government. The use of regional governments to act as the planning and administrative intermediary between the "state guidelines and local action" policy in Minnesota should be investigated, for the regions are large enough to possess expertise in many areas, yet small enough to allow local input. Considering Maine's problem in having the regional units accepted, Minnesota should take steps to ensure their use by local units and state agencies.

b) Co-ordination of policy. Some entity must have this responsibility, to prevent inefficiency and particularly to see that the agency policy matches that of the state. In Maine, the intent is to give each agency broad control over its policies, subject to the guidelines of any state policies. (Interagency conflicts are settled by another mechanism.) In addition, interagency contact should be promoted.

- c) A review mechanism for proposed development, land use, etc.

The Maine development permit procedure provides an admirable attempt to allow many diverse agencies to comment on each proposed project, giving technical advice to the EIC and stating agency policies.

This broad input is necessary.

d) A state plan for growth. This plan would serve as the guidelines for agency actions and development decisions. To be effective, it must be a flexible document, emphasizing processes and patterns as well as static goals. Such a device is necessary if the state indeed intends to help determine the future condition of its land.

- e) Consideration of economic implications of state policies.

Such a need would best be fulfilled by incorporating a trade-off mechanism in the pre-planning stage, ensuring that financial impacts are incorporated into the plans.

2) Close association of a legislative committee with the State Planning Office will allow a political unit to be responsible for making the actual trade-offs needed and for resolving interagency policy conflicts.

3) Minnesota should establish the data base and informational systems needed to ensure comprehensive and accurate planning.

4) Whatever the actual mechanism, Minnesota should detail the criteria upon which it makes its decisions, and make very explicit the information required for each project. The requirements of the Site Location Law and the Act on the Land Use Commission are examples of useful types of standards and information requests.

- 5) Loopholes should be as small as politically possible.
- 6) Planning timetables should follow more than one time-orientation.

An example would be a plan with three orientations:

2-year scope: geared to the legislative session, specific in nature, affected by the governor's platform--
the "working plan"

5-10 year scope: long range goals, fairly reasonable and reliable

20-year scope: distant goals, tempered biennially with current social, technical and economic needs and programs.

7) The initiative must be taken by the state to ensure desired development.

8) The state should view an industry's assessment of its impact with great care; input of facts and comments from other sources are extremely necessary. To prevent an inflated economic impact from being publicized, an application fee for development based on a percentage of the projected economic impact would encourage more realistic projections.

RESOURCES

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Legislation

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MRSA Title 38, Subchapter 11A, Sections 541-557. Coastal Conveyance Law.

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Land Use Regulation Commission, "Proposed Standards for Interim Land Use District Boundaries and Permitted Use", May 31, 1972, Augusta, Maine.

ARTICLE 6
SITE LOCATION OF DEVELOPMENT (1970)
as amended

481. Findings and purpose

The Legislature finds that the economics and social well-being of the citizens of the State of Maine depend upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State: that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect environment.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Environmental Improvement Commission, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environmental of their surroundings.

482. Definitions

As used in this subchapter:

1. Commission. "Commission" means the Environmental Improvement Commission.
2. Development which may substantially affect the environment. "Development which may substantially affect the environment." In this Article, "development" means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development including subdivisions, but excluding state highways and state aid highways, which require a license from the commission, or which occupies a land or water area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land, or under water, excluding borrow pits for sand, fill, or gravel, regulated by the State Highway Commission and pits of less than 5 acres, or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

3. Natural environment of a locality. "Natural environment of a locality" includes the character, quality and uses of land, air and waters in the area likely to be affected by such development and the degree to which such land, air and waters are free from non-naturally occurring contamination.

4. Person. "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, educational or charitable organization or institution or other legal entity.

5. Subdivision. A "subdivision" is the division of a parcel of land into 5 or more lots, any one of which is less than 10 acres in size, if said lots make up an aggregate land area of more than 20 acres and are to be offered for sale or lease to the general public during any 5-year period.

483. Notification required; commission action; administrative appeals

Any person intending to construct or operate a development shall, before commencing construction or operation, notify the commission in writing of his intent and of the nature and location of such development, together with such information as the commission may require. The commission shall within 30 days of receipt of such notification, either approve the proposed development, upon such terms and conditions as are appropriate and reasonable, or disapprove the proposed development setting forth the reasons therefore or schedule a hearing thereon in the manner hereinafter provided.

Any person as to whose development the commission has issued an order without a hearing may request, in writing, within 30 days after notice, a hearing before the commission. Such request shall set forth, in detail, the findings and conclusions of the commission to which such person objects, the bases of such objections and the nature of the relief requested. Upon receipt of such request, the commission shall schedule and hold a hearing limited to the matters set forth in such request. Such hearing shall be scheduled in accordance with section 484.

At such hearing the commission shall solicit and receive testimony to determine whether such development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare.

The commission shall approve a development proposal whenever it finds that:

1. Financial capacity. The developer has the financial capacity and technical ability to meet state air and water pollution control standards, has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.

2. Traffic movement. The developer has made adequate provision for traffic movement of all types out of or into the development area.

3. No adverse affect on natural environment. The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, or natural resources in the municipality or in neighboring municipalities.

4. Soil types. The proposed development will be built on soil types which are suitable to the nature of the undertaking.

At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the commission that each of the criteria for approval listed in the preceeding paragraphs have been met, and that the public's health, safety and general welfare will be adequately protected.

The commission shall adopt, and may amend and repeal rules for the conduct of hearings held under this section in the same manner as provided for the adoption, amendment and repeal of rules of practice before it. A complete verbatim transcript shall be made of all hearings held pursuant to this section.

Within 30 days after the commission adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing such development to construct or operate the same as proposed, or granting such permission upon such terms and conditions as the commission may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

Any person who has notified the commission, pursuant to section 483, of his intent to create a development shall, immediately defer or suspend construction or operation with respect to such development until the commission has issued its order.

Any person securing approval of the commission, pursuant to this Article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until he has complied with such standards.

485. Failure to notify commission; hearing; injunctions; orders

The Commission may at any time with respect to any person who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, schedule and conduct a public hearing in the manner provided by section 484 with respect to such development.

The commission may request the Attorney General to enjoin any person, who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, from further construction or operation pending such hearing and order. Within 30 days of such request the Attorney General shall bring an appropriate civil action.

In the event that the commission shall issue an order, denying a person commencing construction or operation of any development without first having notified the commission pursuant to section 483, permission to continue such construction or operation, it may further order such person to restore the area affected by such construction or operation to its condition prior thereto or as near as may be, to the satisfaction of the commission.

486. Enforcement

All orders issued by the commission under this subchapter shall be enforced by the Attorney General. If compliance with any order of the commission is not had within the time period therein specified, the commission shall immediately notify the Attorney General of this fact. Within 30 days thereafter the Attorney General shall bring an appropriate civil action designed to secure compliance with such order.

487. Judicial review

Any person, with respect to whose development the commission has issued an order after hearing pursuant to section 484 may within 30 days after notice of such order, appeal therefrom to the Supreme Judicial Court. Notice of such appeal shall be given by the appellant to the commission. The proceedings shall not be de novo. Review shall be limited to the record of the hearing before and the order of the commission. The court shall decide whether the commission acted regularly and within the scope of its authority, and whether the order is supported by substantial evidence, and on the basis of such decision may enter judgement affirming or nullifying such determination.

488. Applicability

This Article shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970 or to any development the construction and operation of which has been specifically authorized by the legislature prior to May 9, 1970, or to public service corporation transmission lines except transmission lines carrying 125 kilovolts or more, nor shall it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located.

Sec. 3. Appropriation. There is appropriated from the General Fund the sum of \$20,000 to the Environmental Improvement Commission to carry out the purposes of this Act. Any unexpended balance at the end of June 30, 1970 shall be carried forward to June 30, 1971. The breakdown shall be as follows:

ENVIRONMENTAL IMPROVEMENT COMMISSION	
	1969-70
Personal Services	\$ 4,000
All Other	<u>16,000</u>
	\$20,000

INTERVIEW REPORT

DATE: Thursday, July 20, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: William R. Adams, Jr.: Director, Dept. of Environmental Conservation; Director, Environmental Improvement Commission, 289-2811
Henry Warren: Chief, Site Location Bureau, 289-2446

ADDRESS: Education Building
Augusta, Maine

FUNCTION: Warren administers site location law in toto.

SUMMARY:

1. Site Location Law:

- a. Effective even in unincorporated areas, Land Use Commission-Zoning.
- b. Each permit gets individual consideration.
-no set criteria other than ones in law, since Maine is so varied that they wouldn't be universally applicable.
-problems:
 - a) hard to measure adverse effects on environment.
 - use mathematical measures where possible.
- c. Conditional approval, usually.
-few denials, since conditions usually "bring them around": sewage treatment, access, water supply, etc.
- d. Forces developers to be aware of criteria.
- e. Developers have complained that, since each application is judged separately, hard to know what to include in the pre-planning.
- f. Since June 9, 1972, hearings only if requested.
-usually held after permit denial
 - a) inadequate information
 - b) severe local situation
- g. Re-applications can be filed.
- h. If site law does not cover a project, the EIC in approving air and water licenses will do so.
- i. Public lands recently came under site law jurisdiction.

2. Pollution abatement equipment excluded from tax roles.

3. Economic considerations: If the plant can't meet the criteria, then not an asset to the state.
-lack of tax base in state

4. Opposition to law:

- a. Rural Landowners Protective Association -- Paper industry, realtors
- b. Homebuilders Associated
- c. Realtors Association

5. Problems with law:
 - with two agencies - Site Location and Land Use - administrating and one, EIC, advising; administration an endless task.
 - the law provides for reacting rather than planning.
6. Passage of bill
 - special climate of hysteria - oil question on coastlines
 - special session; bill poorly drafted since done in hurry
7. Changes needed
 - got most of them last session: 14 day timetable for action was weakened, etc.
 - in the future --- exclusions abolished, method of certification of compliance with conditions eased.

INTERVIEW REPORT

DATE: Wednesday, July 21, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Richard Kelso

TITLE: Director, Division of Development, Department of Commerce
and Development

ADDRESS: Plaza Shopping Center
Augusta, Maine

FUNCTION: Economic develop. - attracting industry

SUMMARY:

1. Economic profile of Maine: weak tax base; location restricts market possibilities; paper, shipping industries; cheap labor --- expedited by industries, labor force non-mobile, over 45, largely unretrainable; towns rush to get industry - any industry back in towns; do not consider type of jobs, long-range effect; unemployment "high".
2. Long-range plans:
 - basic industry, with spinoffs - attraction of capital-intensive industry
 - change economic base
 - want the 26 growth, non-polluting, good-quality job industries: in competition with 49 other states
 - "we will talk to anyone willing to make a capital investment in Maine"
3. History of department:
 - a. 1928 - Maine development commission - tourist concerns
1955 - Muskie, who campaigned on platform of economic development, had department for Development of Commerce and Industry;
then: funds used for industry; Department of Economic Development most recent: Department of Commerce and Development.
 - b. No real planners before Kelso and present commissioner came.
 - c. Now emphasizing matching of industry to town, education in the matter of economic development. In last reorganization, the department was almost eliminated --- the Governor prevented this.
4. Reactions to Environmental mechanism:
 - a. Law holds industry guilty until they prove themselves.
 - b. EIC has gone, after not having enough power, to a too restrictive use of the new power.
 - c. Commission needs more representation of varying interests, more expertise on its board.
 - d. Commission regulatory rather than promotional.
 - e. Permit system: the criteria emphasize important points, but the fault is in the administration.

- f. Difficult for industry to get help in procedure and planning to meet criteria.
 - g. Agency reviews tend not to offer any help.
 - h. Public hearings full of harrangue and harrassment, discouraging the intentions of the company in question.
 - i. Legislature did not understand what they passed.
 - j. If the site law does not apply, the water and waste disposal permits will, so control is exercised.
5. Economic considerations:
- a. Realized that all decisions have future implications, choices should be wisely made.
 - b. Smaller industries, unable to afford pollution control devices, will be forced out of business -- sees that as okay -- weak losing, strong growing stronger.
 - c. Laws have cut down marginal business from growing or coming in, these types of industries not particularly desired anyway.
 - d. No tax incentives other than tax exemption of pollution control devices.
6. Recommendations and comments:
- a. Need co-operation of the agencies.
 - b. Conservation-environmental concerns and development shouldn't be in the same agency, conflict of interest.
 - c. Planning and development should be in same agency, to ensure co-ordinated policies.
 - d. Additional land use commission regulations could be superfluous.

COMMENT: Very much a developer

INTERVIEW REPORT

DATE: 2 July 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Marshall Burke

TITLE: Executive Secretary, Maine Natural Resources Council

ADDRESS: 20 Willow Street
Augusta, Maine

TELEPHONE: 622-3101

FUNCTION OF NATURAL RESOURCES COUNCIL:

- Co-ordinates Maine's environmental groups, other concerned peoples;
- Provides monthly newsletter, various publications to inform people of provisions of bills, environmental actions, etc - sent to all legislators;
- Does research on proposed projects, laws;
- Urges members to lobby for/against bills, but the council itself doesn't lobby;
- Adopts stands on various issues, primarily those relating to natural resources;
- Allows method of communication between environmental groups.

SUMMARY:

1. Stand on economic growth: "Orderly growth", but no specific plans
 - seemed touchy about statistics employed and their validity
 - how do you judge the underemployed;
2. Few stands on social issues;
3. Recommendations:
 - a) Conditioning climate needed, so that over-reaction is minimized
 - b) Good, altruistic leadership;
4. Opposition: Common Sense Assoc. - management of natural resources

COMMENTS:

- See attached organization chart for Maine's environmental set-up in the government
- From an NR monthly bulletin

RECOMMENDED FOLLOW UP:

"Art of the Impossible", Robert W. Patterson, Daedalus

INTERVIEW REPORT

DATE: Thursday, July 20, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Peter Bradford
 TITLE: Special Assistant to Governor & Public Utility Commissioner
 ADDRESS: State Capitol Annex
 Plaza Shopping Center
 Augusta, Maine
 TELEPHONE: 289-2446

FUNCTION: Worked with Governor's office when trying to pass site location law.

SUMMARY:

1. Background to Site Location Law:

- great oil scare of 4 years ago was the impetus;
- moderately conservative legislature;
- passed during special session (nobody reads bill very carefully);
- 3 bills proposed at same time -- one was a moratorium on development, other was stop-gap -- gave option in favor of governor's favored bill;
- bipartisan support for bill -- gave sponsorship to Republican majority though governor was Democratic;
- originally an oil control bill -- in a hurry to pass one;
- Curtis, governor, has threatened to veto any amendment or bills against the legislation;
- no regional government and county government weak;
- there has been little progression from the law -- the only significant bills have been Shorelands and Land Use Regulation.

2. Site Location Law - Purposes (passed January 1970):

- a. To turn down two pending oil applications;
- b. To put a stop to fly-by-night speculation, i.e. fix a point in time after which a plan has to go to the public and be thought-out -- definition of public interest so that advanced planning can be accomplished.

3. Is there sufficient criteria in Site Legislation to allow the Environmental Improvement Commission (EIC) to evaluate economic and environmental trade-offs?

- No;
- afraid to open up law because of backlash;
- land use control law has more detailed criterion;
- Site Location Law is subject to a couple of law suits (poorly written); if try to clarify it in the legislature, the courts will assume different original intent and decide suits against the EIC;
- no provision for economic benefits, although it could be more specific about what constitutes environmental degradation;

--divorced from any planning process - could tie site law enforcement to comprehensive planning.

4. Power Plant Siting:

--no development criterion;
 --with Site Location Law can avoid Minnesota situation where NSP gave the responsibility for siting to the Governor.

5. How Improve Site Location Law?

a. Site law merely reacts, it does not permit the Board to weigh one site against another (a rider on the original bill would have required the Board to suggest another site if it rejected one, but it was thought unworkable)

b. What should Minnesota be wary of?

--can't trust a company's assessment of economic benefits;
 --ought to have special assessment, i.e. an application fee which is 1/10 of 1% of the capitol assets of the project, which would:

- 1) give money to agencies so they can hire consultants & technical people, and
- 2) discourage unrealistic projections.

6. Conflicts between economic development and the environment:

--the Governor would like to monitor the projects and have everything go as smoothly as possible;
 --no harm for developers, there is a pro-development philosophy in the Governor's office as long as the final word is from an agency with a strong conservation viewpoint;
 --the Development Dept. will have to follow precedents, i.e. decisions made by the Board, especially including oil developers, and pay attention to the environmental standards;
 --Bradford thinks disagreement is healthy and stimulates agencies to identify their roles.

7. Role of state dealing with industry:

--will have to decide if actively and affirmatively set-up industrial parks, etc. for industry
 --or set up guidelines;
 --if state wants cluster development, it will have to take a more active role.

8. Miscellaneous

--pushing for alot in a bill which contains both economic and environmental concerns; uneasy about both approval and development functions in one agency.

INTERVIEW REPORT

DATE: Wednesday, July 19, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: Philip Savage

TITLE: Director of State Planning Office

ADDRESS: 189 State Street
Augusta, Maine

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FUNCTION: Didn't see himself as coordinator -- saw himself responsible for developing state plans and goals.

SUMMARY:

1. Population and economic profile:
 - a. A lot of military-type retired people -- come for environment and do not want economic development.
 - b. Natives stress self-reliance, disgrace to be on welfare.
 - c. Lowest economic status of New England states.
 - d. 15,000 Indians (non-federal).
 - e. Lost shoe and textile industries and paper mills old and inefficient.
 - f. Summer home millionaires buying-up coastland.
 - g. Land values are increasing (owned by paper and pulp manufacturers, no local interference).
 - h. 51% of area still unincorporated.
2. Planning Districts: (districts are groupings of local governments)
 - established for two years, not yet working.
 - devised on Maine's 8 major drainage areas with few economic considerations.
 - Jan. 26 -- Governor's executive order directed all agencies to follow districts -- Ec. Dev. refused, said it wanted to preserve the integrity of the county.
 - planning is in the process of drawing up guidelines for districts, get districts to cooperate.
 - depending on Federal Law Circular A-95 and acceptance of state districts by Federal Regional Council for the success of Maine's districts/need to destroy the tyranny of the expert, federal money too narrow.
 - economic development and environmental considerations have to be made at the pre-planning stage -- there is a problem with the incentive structure.
3. Problems:
 - a. Not with large subdivision but a lot of unplanned individual second homes which can become slums.
 - b. Biggest problem is institution -- need a built-in capacity for coordination and dialogue with the 3 levels of government and a mechanism to relate ec. and environmental concerns early in planning.
 - c. Tradition of town meetings -- older people and farmers stock it because held during day in March when farmers have little to do.

4. Maine Land Use Commission: preparing land use plan for unincorporated area
5. In Governor's Office:
 - agencies reviewed through A-95 and have state equivalent of A-95
 - all have environmental impact statements
 - illusion that speak for Governor
 - there is a separate Budget Agency -- next step is to bring this in with planning
 - Governor management minded --- initiated 1st phase of PPB, successful
6. Power Plant Siting:
 - Governor's task force on it;
 - internal disputes --- division between economics and environment -- vicious debate;
 - not enough data or information on the coast;
 - may be picked for nuclear development on coast.
7. Reorganization:
 - 226 separate boards and agencies;
 - dropped 35 agencies, 40 integrated;
 - residue of unpopularity toward SPO;
 - couldn't do without Governor's support;
 - need to have at least 60% of programs using the same functional and geographical lines, i.e. consistent area definition.
8. Planning: short range problems dealt with first
 - define problems and present tentative solution to executive -- make him start thinking about it;
 - waste a lot of time with planning boards and councils -- planners hide behind councils -- impedes fast response to executive.
9. Environmental Improvement Commission -- site by site review of industrial, commercial, and residential development
10. Land Use Plan combination of:
 - a. Land Use Commission's recommendations.
 - b. Coastal Plan -- shoreland zoning act on coastal and any major body of water (4,052 miles of coastline) -- used McHarg's overlay process -- good product because coast largely undeveloped -- land use and zoning will be simple.
11. Implementation
 - local governments have bad local zoning record
 - out of 495 local governments only 78 have effective zoning
 - out of 141 minor civil divisions only 38 have effective zoning
 - 450 local governments have less than 5,000 population -- no staff or fiscal resources to zone
 - find a lot of conservation and respect for private property

INTERVIEW REPORT

DATE: Friday, July 21, 1972

INTERVIEWER: Victor Arnold, Nancy Onkka, Cynthia Whiteford

NAME: James Haskell

TITLE: Director, Land Use Commission

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SUMMARY:

Two Main Suggestions:

1. Development of centralized, standardized data base for all state agencies
 - state planning has been promising for 3 years;
 - need someone besides paper companies giving facts;
 - bureaucrats are generally mistrusted - need this information.

2. Need viable State Planning Agency which coordinates all of the other agencies such as transportation, economic development, Land Use, Pollution (line functions)
 - using PPB;
 - with a legislative committee closely associated with state planning giving SPO guidance when making trade-offs;
 - when trade-offs are made, representatives of the other agencies should be present;
 - all plans ratified by executive, then legislative;
 - each agency will do studies on own specialties, branches, not state planning;
 - EPA is sister to EIC;
 - EIC regulates and the Land Use Commission plans and studies - these two should remain separate;
 - get rid of adversary system, state planning will have to sit down with industry or Maine will go nowhere; Power Plant Siting would be handled in comprehensive plan.

3. Planning Timetable:
 - 2 year plan coincides with legislative sessions, very specific, live by it and Governor's platform is made-up of part of it;
 - 5-10 year plan - stated long-range goals, fairly reasonable and reliable;
 - 20 year plan - tempered biennially with current social, technical, and economic needs and progress.

Land Use Commission (appointed by Governor):

1. It is State plan for unorganized areas but it cannot regulate any forestry and the forest industry is exempt from any wetlands regulations.
2. Handled first 150 applications.

3. The Interim regulations just underwent public hearing - they allow the Commission to regulate without an overall plan.
4. If industry is so marginal that it can't pay for its pollution devices - Maine doesn't need it because the standards are not that strict.
5. Second home developers promise all types of amenities - about 10% can't finance them - need enforcement, could put up bonds to ensure performance.
6. Land Use plan should be a comprehensive plan unlike the site location law which is too strict and rigid and does not consider patterns or orderly processes. Need something like the lake systems model which has been developed.
7. The Interim Land Use Plan -- is an interim period, involving inventory process and continued building but not into virgin land; it will propose standards for zoning districts.
 - By July 1, 1973 - 10½ million acres have to be zoned, involves 460 townships;
 - a. First edition is an overview report, the plan is a process - a progress report;
 - b. State needs have to be reported, information collected, and broad recommendations for more interim plans made;
 - c. Until more solid information is collected, can put areas into protection districts (authority in omnibus bill) and can regulate cutting in 3 of 4 zones -- have management districts in areas of above 2500 feet and undeveloped shoreland;
 - d. Criteria (presently working on check-list):
 1. Not interfere with neighboring uses;
 2. Not interfere with the environment and can attach conditions on approval.
 - e. Free trade zone is established - will need coordination of agencies, coordination of a public works program, and comprehensive land use plan.

COMMENTS: Maine has 12 of 14 deep water ports.
Excellent resource person.

RECOMMENDED FOLLOW UP:

He will send a copy of the interim regulations.
Oregon, Hawaii, Minnesota, Wisconsin, Iowa, and Vermont - have good zoning laws.

CHAPTER VIIIOREGONSTATE PROFILEGeographic and Population Factors

Oregon,* located in the Pacific Northwest, is bordered on the west by the Pacific Ocean, on the east by the Snake River and the State of Idaho, on the north by the Columbia River and the state of Washington and on the south by the states of California and Nevada. The total area for the State of Oregon** is 96,981 square miles; of that amount 96,248 square miles or 61,598,720 acres is land area, while 733 miles is water, excluding Pacific Coastal waters.

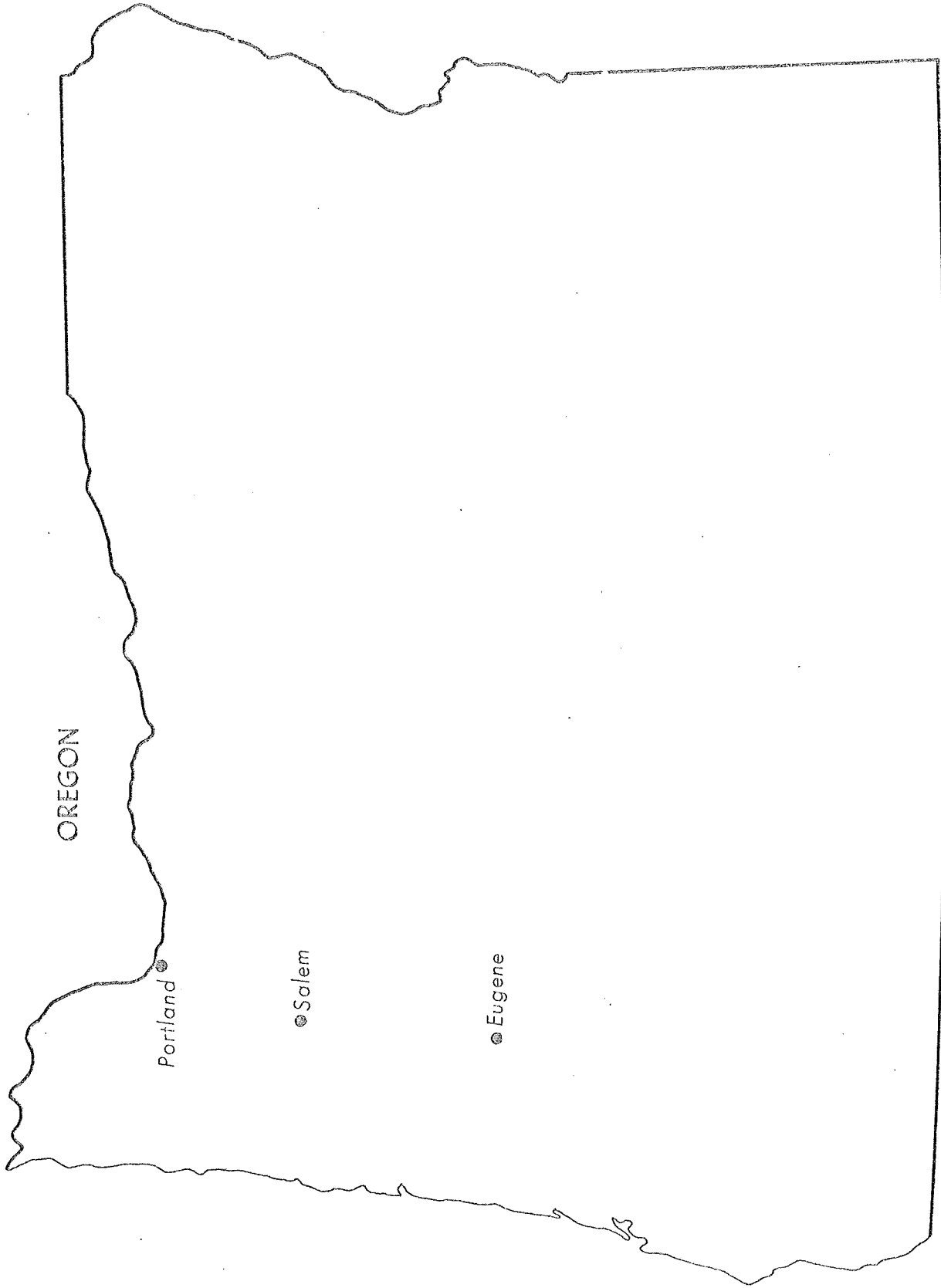
Oregon contains over 400 miles of ocean coast line. The Coastal Mountain Range provides a forested barrier between the moist temperate coastal area and the more arid Willamette River Valley.

The valley is the heartland of Oregon both in terms of population and activity. It stretches from Portland in the north for fifty miles to Eugene in the south, containing approximately 15% of the land area or 5,000 square miles. The east side of the Valley is flanked by the Cascade Mountain Range. The Valley suspended between the two mountain ranges presents a natural air pollution pocket. Beyond the Cascades in a high arid plateau dotted with several smaller mountain ranges lies the eastern half of the state.

About 45% of Oregon's 62 million acres of land is comprised of forests. In fact 26.6 million acres is commercial timber land, with 151

* see map

** Rank by states - 10th



Scale 1: 3,000,000

areas of not less than 5,000 acres of virgin timber. Agricultural pursuits account for roughly 35% of Oregon's land or 21 million acres. Forest areas are found principally in the various mountain areas while agriculture areas are located in the Willamette Valley and the eastern half of the state.

Oregon has a major seaport at Portland 101 miles inland from the mouth of the Columbia River. A clear 37 foot channel is maintained all the way to Portland, which is located on the Willamette River just a few miles from its confluence with the Columbia. A 27 foot channel is completed beyond Portland to The Dalles 84 miles farther up the Columbia. Barge transportation is regularly available upstream on the Willamette, and on the Columbia to Pasco, Washington. Seasonal barge travel can extend as far inland as Lewiston, Idaho, on the Snake. The other major seaports are located at Astoria on the mouth of the Columbia and at Coos Bay on the southern Pacific Coast. The latter two ports handle roughly one-half of the tonnage handled at Portland.

Presently 53% of the land is owned by the Federal Government and is administered chiefly by the Department of the Interior. Only 3% of the land is owned by the state of Oregon.

Oregon's 1970 Census population was 2,091,385. That figure represented a gain of 18.2% between 1960 and 1970. The largest gains were centered in the Willamette Valley. There exist three U.S. Census defined standard Metropolitan Statistical areas in Oregon, all located in the Willamette Valley.* These SMSA areas registered an increase of 22.8%, 26.6%

*Portland, Salem, Eugene

and 31.0% respectively. The population of urban areas totaled 1,402,704 in 1970, an increase of 27.5%. Rural areas on the other hand totaled only 688,681, an increase of 3%.* In fact 12 of the 36 counties in Oregon actually decreased in population, none of which are located in the Willamette Valley.

At the present time 70 -85% of the population lives on 15% of the land in the Willamette Valley. The population density in the Valley averages close to 100 people per square mile, compared to the state average of 21 per square mile, and the national average of 60.7 persons per square mile. The greater Portland Metropolitan Area contains over $\frac{1}{2}$ the population of the state.

A study conducted by Pacific Northwest Bell predicts that Oregon will continue to grow between 10% to 12% in each of the next five-year periods. That would result in a population of 2.3 million in 1975 and to just under 3 million in 1985.

Economic Factors

The Oregon economy has been experiencing impressive growth over the last ten years (1960-1970). Personal income has grown over 96% to a level of 7.8 billion dollars. Per capita income is estimated at \$3,696 for 1970, nearly 66% greater than the 1960 level of \$2,235. Gross state product has grown at a slightly faster rate than gross national product. Between 1960-69 GSP increased 85.5% to a level of 9.1 billion while G.N.P. increased 84.9%.

*See Census Table

OREGON

The State
Size of Place
Standard Metropolitan
Statistical Areas
Urbanized Areas
Places of 2,500 or More
Counties

	Population										Households			Population in group quarters	
	All persons							Persons 14 years and over— Percent married		Persons 18 years and over— Percent male	Households			Population in group quarters	
	Number	Percent change 1960-70	Percent Negro and other races	Percent under 18 years	Percent 18 to 64 years	Percent 65 years and over	Fertility ratio ¹	Male	Female		Number	Percent change 1960-70	Persons per household	Number	Percent of total
The State	2 091 385	18.2	2.8	33.4	55.8	10.8	330	67.2	63.5	47.9	691 631	23.9	2.94	57 283	2.7
SIZE OF PLACE															
Urban	1 402 704	27.5	3.3	31.7	56.9	11.4	323	66.3	60.3	46.9	479 411	32.8	2.33	48 364	3.4
Urbanized areas	984 052	40.5	4.0	31.7	57.2	11.0	319	66.2	59.6	46.6	338 186	45.2	2.82	29 230	3.0
Central cities	527 261	24.5	6.3	28.2	58.1	13.7	289	61.7	54.1	46.0	193 940	28.4	2.60	23 249	4.4
Urban fringe	456 791	65.0	1.3	35.8	56.3	7.9	353	71.8	66.7	47.5	144 246	76.1	3.13	5 981	1.3
Other urban	418 652	4.7	1.9	31.7	56.1	12.3	333	66.3	62.1	47.7	141 225	10.4	2.83	19 134	4.6
Places of 10,000 or more	223 732	3.9	2.2	30.6	58.2	11.2	314	63.6	60.5	48.2	75 069	10.1	2.79	13 971	6.2
Places of 2,500 to 10,000	194 920	5.7	1.5	32.9	53.6	13.5	357	69.6	63.9	47.1	66 156	10.7	2.87	5 163	2.6
Rural	688 681	3.0	1.8	36.7	53.6	9.7	346	69.2	70.5	50.1	212 220	7.6	3.20	8 919	1.3
Places of 1,000 to 2,500	84 432	13.1	1.2	35.8	53.1	11.1	370	70.4	67.8	48.3	27 456	17.4	3.04	940	1.1
Other rural	604 249	1.7	1.9	36.8	53.6	9.6	343	69.0	70.9	50.3	184 762	6.2	3.23	7 979	1.3
STANDARD METROPOLITAN STATISTICAL AREAS															
Eugene	213 358	31.0	1.5	34.0	57.7	8.3	322	66.4	64.9	48.9	68 257	39.7	3.04	5 680	2.7
Portland, Oreg.-Wash.	1 009 129	22.8	3.8	33.0	56.2	10.8	332	67.3	61.2	46.9	341 505	26.9	2.89	20 910	2.1
Salem	186 658	26.6	1.6	33.8	54.0	12.2	330	66.9	61.6	47.3	59 175	35.4	2.98	10 150	5.4
URBANIZED AREAS															
Eugene	139 255	45.5	1.8	32.4	59.6	8.0	310	64.3	61.9	48.5	45 371	55.2	2.95	5 222	3.7
Portland, Oreg.-Wash.	824 926	26.6	4.4	31.8	56.9	11.3	327	67.0	59.7	46.3	286 578	31.0	2.82	18 125	2.2
Salem	93 041	...	1.7	31.9	56.1	11.9	308	66.0	58.8	46.4	30 689	...	2.80	7 246	7.8

Oregon's civilian labor force for 1970 is estimated at 928,600 with approximately a 6% rate of unemployment. It was felt by the Governor's Office that Oregon was having a "good" year and that due to the seasonal nature of Oregon's main industries, the 6% rate of unemployment did not really reflect the state of the economy. I was unable to obtain a figure for underemployment; however, I was told that it does exist to a degree.

Traditionally Oregon's big three of industry have been lumber and wood products, tourism, and agricultural products in that order. Efforts are being made to move away from a reliance on these three; however, it is too early to evaluate the effort.

As a result of its seaports foreign trade is a large factor in the Oregon economy. In 1969, the combined dollar value of imports plus exports for the Oregon Customs District was estimated at a little over one billion dollars. The rate of growth of trade for the period 1960-69 was 246.6% for imports and 80.7% for exports, although exports still account for 2/3 of the total billion dollar trade. Oregon's principle exports are timber and agricultural products.

An additional problem is that the lumber industry is also the number one pollution problem in the state. In general the lumber industry has been cooperative. To date only 2 or 3 firms have closed down due to pollution requirements. However, those firms were on shaky ground to begin with. Boise Cascade is the main source of trouble, and the only lumber firm that has been taken to court. They operate a number of outdated inefficient wood processing plants and are naturally reluctant to upgrade them. Apparently most other pulp processors have been willing to clean up.

Tourism also has been a problem. The Oregon Coast is the center for the summer tourism business. The coast, however, is a very fragile and finite eco-system that must be carefully controlled or destroyed. In addition to the yearly influx of tourists the coast is also experiencing rapid uncontrolled housing development. To date the State does not have any means to control the situation or any real planning capability.

Oregon has no active programs for seeking industry. Governor McCall in fact has proclaimed a no-growth policy for the state. What this apparently means is that industry is welcome but on Oregon's terms. Thus, although the Department of Economic Development will actually seek out industry for Oregon, the Department does not have any incentives available to it to induce industry to locate in Oregon. And, of course once there any industry must conform to existing pollution regulations.

For instance the Department is particularly interested in locating industry outside of the Wilamette Valley. Many industries cannot do this due to their market orientation. "Foot loose" or non-resource base national distribution types of industry can; however, they usually want to locate near the Universities in the Valley. The result is industry locates where it wants to. The Department does not have any planning funds or capabilities. Coordination with environmental agencies is done on an informal ad hoc basis.

Political Factors

Traditionally the Oregon legislature has been controlled by a conservative coalition. At the present time the Senate is Democrat while the House is Republican. The Democratic party is the dominant

party in Oregon (200,000); however, the Democrats are factionalized and very independent. Tom McCall, the present governor, is a Republican.

The legislature swings towards a pro development or economic position but will go for conservation when issues are pressed by the population of Oregon. Although we received conflicting accounts, apparently the legislature played a leadership role in the enactment of environmental legislation. In fact the last session was called the environment session.

Apparently the population has mixed feelings concerning the environment. People and legislators are perfectly willing to enact controls or environmental regulations over other people. This phenomena is especially true for the Willamette Valley where the majority of the population resides. Pacific Northwest Bell Telephone Company funded the Harris Poll to conduct a survey of attitudes of Oregonians towards the environment. A copy is contained in the appendix.

A number of interest groups exist in Oregon. The Oregon Environmental Council is a very effective lobby for the environment. It contains approximately 150 different organizations with an estimated active membership of 5,000 people.

The Associated Oregon Industries is a very powerful and successful lobby for Oregon business interests. It is well run and well financed. It has a pro development policy but has been willing to go along when pushed on environmental issues.

A backlash group has also been organized called W.E.T.A. It is composed of industry, labor unions, and newspaper publishers. The common bond is a concern for the economy of Oregon. Its goal is to put

pressure on DEQ to go easy on environmental concerns when they clash with economic considerations.

STATE REACTIONS TO ENVIRONMENTAL PRESSURESProblems

A. At the present time the State of Oregon employs approximately 32,000 people. The State budget for 1972 was \$708 million with a budget of over \$1 billion expected for 1973. Approximately \$190 million of the 1972 budget went to environment agencies. The trend has been to provide more funds for the environment, but at the same time allocating a smaller percentage of the total yearly budget.

There exists at the state level over 380 single purpose boards and commissions. Each board or commission is relatively autonomous from any control from the Governor's Office or the citizen body. The average membership is three, with staffs and budgets varying widely. Frequently membership is in the hands of the very groups the board regulates. Naturally these groups are reluctant to give up any power.

Governor McCall was faced with the need to coordinate the activities of these boards and commissions. (See Solution 1)

B. Over the past 20 years Oregon has been experiencing rapid growth in population and urbanization. More people with more activities have placed more pressure upon the resource base. The state was presented with the need to coordinate conflicts between urban, rural, commercial, noncommercial and present, future needs. A mechanism was needed to facilitate planning and development for the highest and best use of Oregon's limited resources and careful control of the quality of the Oregon environment. (See Solution 2)

C. The Governor and other State Officials were interested in any ways that could be found to aid and encourage Oregon industry to voluntarily comply with Oregon pollution laws. (See Solutions 3, 4)

D. The Governor was also interested in some type of mechanism that would allow the State to take advantage of the knowledge and the resources that existed in the various state universities, especially with regard to environmental matters.

E. By 1968 23 state agencies had subdivided Oregon into 51 different and conflicting administrative districts. It was impossible to use data or statistics collected by one agency for any other agency.

At the same time it was almost impossible to explain or even know what State programs or policies existed relative to a particular local governmental unit. The problem was to develop some order out of this chaos.

Solutions

1. In attempting to deal with the fragmented governmental structure of Oregon, Governor McCall did a number of things.

First, he hired a very experienced and capable staff that had the respect of many of the powerful forces both within and without Oregon State government. As a result, the Governor was able to use his office as the coordinator for the various agencies dealing with any particular issue.

Protecting the environment has been a particularly "hot" issue in Oregon in recent years. The Governor, a former television newscaster,

used his office as a focal point for environmental issues.* In that way he was able to gain the cooperation and backing of various groups on any particular issue.

Second, Kessler Cannon, the Governor's Assistant for Natural Resources, prepared a listing of the various agencies, committees, boards, and compacts who have some impact on the Oregon environment. The document contains the following parts: (1) a summary description of each governmental unit; (2) a listing of the statutory requirements for board or commission members and the chief executive of each operating unit; (3) any statutory policy statements for a particular unit; (4) and a listing of all Oregon statutory references to a particular unit. The document thus provided a benchmark for the Governor's Office in its attempts to coordinate the activities of the various units. A copy of the report is contained in the appendix.

Third, the Governor, through Kessler Cannon's Office, established the Committee on Natural Resources and the Environment. The Governor named himself as Chairman of this Committee. Membership is made up of heads of all agencies with an environmental impact. Regular meetings are held the first Thursday of each month.

The purpose of the Committee is to force the various agencies to discuss policy, planning, and common interests. As a result different

*A statement by Governor McCall on his role in protecting the environment and recent environmental legislation passed in Oregon is contained in the appendix.

agencies are beginning to see the areas of overlap and conflict. Although slow at first, cooperation is beginning to take place. This approach is regarded as the minimum step in establishing coordination of agency activities. The Governor anticipates that this type of committee approach will become statutory at the next session.

Fourth, the 1969 Legislature created the Department of Transportation. This action takes the establishment of an interagency committee one step further. The DOT forms an umbrella over the previously separate departments of Aeronautics, Highways, Mass Transit, Parks, and Motor Vehicles. The first four divisions retain their separate Boards and all discretionary powers. The division of Motor Vehicles is under the direct control of the Governor.

The Department's primary function is to make recommendations to the Governor about transportation policy and to act as coordinator of the activities of the various divisions.* The DOT has no regulatory authority. The present staff includes 11 people, mostly planners, who link up with the planners and personnel in the various divisions. It is recognized that a totally integrated DOT would be the most desired solution; however, that does not seem likely in the near future.

Fifth, at the present a Department of Natural Resources does not exist in Oregon. Traditionally the Governor proposes the establishment of a DNR at each session of the Legislature. Prospects for its establishment by the 1973 Legislature do not look any brighter.

*An outline of DOT proposed objectives, accomplishments and activities for 1973-75 is contained in the appendix.

There are a number of reasons for its defeat each year. First, there is the issue of what to include or exclude in the Department. The Governor's bill would include: Fisheries, Forestry, Game, Geology, Mineral, Lands, Soil and Water Conservation, State Engineers and Water Resources. Second, there is the problem of tradition. There exists a firmly entrenched bureaucracy for each separate existing agency backed by a special interest clientele. Neither group is particularly interested in becoming a part of an integrated DNR. Finally, in the past political tradeoffs have been such that the establishment of a DNR never occurs.

2. The Solution to Problem B was the establishment of the Department of Environmental Quality. The DEQ and its policy making body, the Environmental Quality Commission, existed prior to 1969 as the State Sanitary Authority, a division of the Board of Health. The 1969 Legislation established the DEQ as a separate department to provide additional visibility to the public and make it independently capable of meeting the environmental problems of the State of Oregon in the future.

The Environmental Quality Commission is the only commission that serves at the pleasure of the Governor in Oregon. In fact, the Governor has appointed himself as Chairman of the Commission. The reason these two things were done was to make the Commission responsive to the people through the Office of the Governor.

The Department of Environmental Quality has the responsibility of establishing and maintaining standards for environmental quality

in the fields of water, air, noise, and solid waste. To accomplish this responsibility, the Department sets standards for air, noise, and water quality and for discharge or emission contaminate levels. Statutory grants of authority and sample regulations are contained in the appendix.

The organization and functions of the Department are not unlike Minnesota's PCA. The Director oversees a staff broken down into divisions along functional lines. The divisions are: air, water, solid waste, noise, lab and research, field service (regional offices), administration services, and the director's office. The total staff numbers approximately 125-130 people, with a 3 million to 4 million dollar budget per biennium. The staff is responsible for the operations of the Department, while the EQC is responsible for policy and the review of major staff decisions. Meetings take place at least once a month. To date review of staff actions has been pro forma.

It is only in the last year that L. B. Day, the present director, was named to the staff. Apparently the feeling was that the former director, now assistant director, was too cautious. People look for the agency to begin flexing its muscles.

Aside from issuing regulations the principle regulatory mechanism for the Department has been its permit system. Under this system anyone discharging materials into public waters must obtain a permit issued by DEQ. It should be noted that solid waste permits are also required and that as of January 1, 1973, air permits will also be required.

The process is begun by filing an application with the DEQ (forms are contained in the appendix). Once a completed application with any necessary additional material is received the Department has 45 days to reply. The reply takes the form of a decision with stipulations. Once that decision has been issued the applicant and any other interested parties, both public and private, have 14 days to prepare comments. At the end of the 14 day period a final permit is drafted based on the earlier action and any comments received. Public hearings are not generally held, although they may be if so requested. The action of DEQ may be appealed within 20 days to the EQC. The decision of the EQC may be appealed to the Courts. We were told in practice that appeals to the EQC were rare.

Permits are not issued for periods longer than 5 years. Permit renewals are treated as new applications. Existing facilities are issued permits based on a stipulated compliance schedule. For instance, a particular plant may have 2 years to install the necessary equipment to finally meet Department water regulations. Reviews are conducted periodically to ensure compliance with the agreed upon schedule. New facilities are required to comply with standards immediately.

At the present time the permit process is undergoing revision. The Department has entered into a joint agreement with Environmental Protection Agency whereby EPA personnel will be located in the Department and enter into the permit process immediately. The result will be only one permit will be issued to meet state and federal requirements. It is also planned that public notice (by mail) will be given, to any individual or group who requested it, on all permit applications.

It was felt by the staff of DEQ that the permit process provided the best mechanism for the enforcement of Department regulations currently available.

3. The State of Oregon has established a tax relief program for Oregon industry. The purpose of the program is to encourage the construction, installation, and use of facilities to prevent, control or reduce air or water pollution. To obtain the tax relief a 3 step procedure must be followed.

First, a "Pollution Control Facility Certificate" must be obtained from the Department of Environmental Quality. The necessary application forms are contained in the appendix. Under the original law (Chapter 592, Oregon Laws 1967), the Department was required to determine whether or not the principal purpose of a facility was for pollution control or for the recovery of a saleable or usable commodity. If the Department found the former it certified the entire cost of the facility, but if it found the latter it denied certification completely.

This procedure has been changed by subsequent amendments in 1969 (Chapter 340, Oregon Laws 1969) and in 1971 (Chapter 678, Oregon Laws 1971). Now, upon receipt of the application the DEQ certifies what the actual cost of the facility was and the percentage of the actual cost which can properly be allocated to the prevention, control or reduction of pollution. Specifically the Department must certify whether the percentage of the actual cost so allocated is 80% or more, 60% or more and less than 80%, 40% or more and less than 60%, 20% or more and less than 40%, or less than 20%.

The Department must act on an application for certification before the 120th day after filing of the completed application. Failure of the Department to act within this 120 day period constitutes rejection of the application. An applicant may withdraw an application at any time by filing a written request with the Department for such withdrawal.

Upon completion of this review of the application by the Department, the Department staff will prepare a brief summary of the application and its recommendations for action. These will be forwarded to the applicant and to the Environmental Quality Commission prior to the date of the Commission meeting where final action on the application will be taken.

If the Commission finds that a claimed facility meets the requirements for eligibility and certification, it will cause the certification to be issued. If the applicant is dissatisfied with the percent of certification or any other action of the Commission, he may appeal that action to the Courts as provided in ORS 449.090 before the 30th day after receipt of the certificate.

A discussion of the basic policy criteria used by the Commission in making its determination is contained in the appendix.

Second, an irrevocable election must be made to take the allowed credit either (a) as a credit against income or excise taxes or (b) as an exemption from ad valorem taxes on the certified facility. This election must be made within 60 days after receipt of the certificate by the applicant. The law also provides that no tax relief shall be allowed for any pollution control facility constructed or used by or for the benefit of any governmental or quasi-governmental body or public corporation or farm thereof. The appendix contains a more complete

discussion of the rules of the Tax Department in administering this program.

Finally, the "Pollution Control Facility Certificate" must be filed with the appropriate taxing agency in accordance with their requirements.

It should be noted that the DEQ may revoke a certificate if it finds that the certificate was obtained by fraud or misrepresentation or if the holder fails to operate the facility for the purpose of and to the extent necessary for pollution control.

To date over 50 million dollars has been credited since 1967. It was the feeling of those individuals with whom I discussed this program with that it was a success and that it was worthy of consideration for adoption in Minnesota.

4. In order to publicize its activities and to encourage Oregon industry to comply with pollution standards the DEQ has established a program called CUP (Clean Up Pollution). Under this program the DEQ awards a CUP Certificate to any industry or firm that maintains a good pollution record. The certificate entitles the firm to place a CUP logo on their vehicles, uniforms, etc. and to display a CUP trophy in their office. Although this is a relatively minor program it has nevertheless increased the awareness of both the public and industry to environmental issues.

5. Pacific Northwest Bell Telephone commissioned Louis Harris and Associates to conduct a survey of public attitudes on environmental problems in the states of Oregon and Washington. A copy of the Oregon report is contained in the appendix. Questions were asked on air and water pollution,

attitudes about new industry, tourism, recreation, transportation, the zoning of land, the acquisition of more park and seashore areas, litter, the storing of toxic gases and the disposal of atomic wastes.

As might be expected the survey has proved to be a valuable political tool, by clearly delineating the attitudes of Oregonians on key issues concerning the environment. Thus, the Legislature, the Governor's Office and the industries of Oregon know exactly how the populace feels on certain matters. Naturally the various groups are more responsive to those environmental issues that command more public awareness.

6. The Governor, through the office of Kessler Cannon, has established the Advisory Committee on Environmental Science and Technology, headquartered at Oregon State University, Corvallis, Oregon. Coordination of the Committee's activities is done by Mr. Cannon's Office.

The Committee was established in 1970 to provide a more effective interchange of information and mobilization of resources to meet environmental problems in Oregon. The stated objectives of the Committee are:

"Establishment of more effective communication channels between university research organizations and the executive and legislative branches of state government to aid in long-range planning of state and regional programs which may have environmental side effects."

"Mobilization of information resources concerned with environmental science and technology in a systematic and analytical manner to provide state government, local government, and the general public with accurate and understandable information and advice."

"Identification and assessment of emerging and potential environmental quality problems on an annual basis primarily for the benefit of state government officials."

"Dissemination to the public of scientific and technological information related to the environmental sciences through a continued science extension program."

Specifically it is envisioned that a series of reports will be issued by the Committee on the status of environmental quality in the State of Oregon. The first such report, entitled, Environmental Quality in Oregon 1971,* was issued last year. Besides state funding, a grant from the National Science Foundation was obtained. Preparation of the report was done principally by Oregon State University, the Department of Environmental Quality and the Executive Department. Contributions were also made by various other state and federal agencies.

This initial report contains: the basis for public concern about environmental quality; identification of the broad problems of environmental pollution; assessments of the level of quality or degree of pollution are made when possible; and limited recommendations for future action by the universities and the state are made. The report does not attempt to deal comprehensively with all environmental problems. Rather, the purpose of this initial report was simply to provide a benchmark for future reports.

*copy in appendix

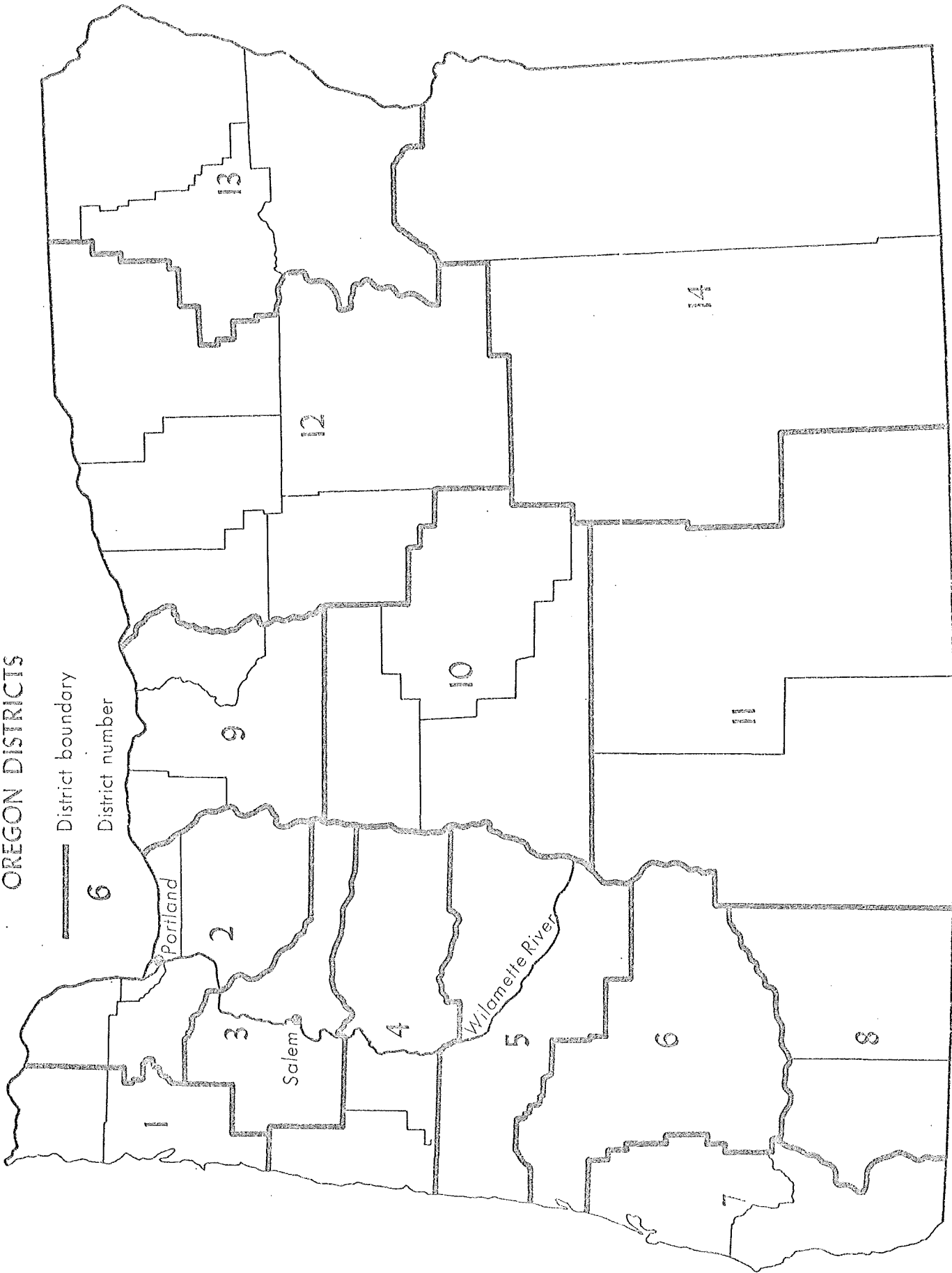
The Committee has subsequently issued a number of other reports. A report on noise pollution was issued in May of 1972. The purpose of the report was to provide background information on and to indicate the status of community noise problems in the State of Oregon. It is in fact an expansion of a section contained in the initial 1971 Report. A report was also issued in June 1972 providing a semi-historical account of the Willamette River from 1926 through 1971. This report highlights the work of public and private groups in their successful effort in returning the Willamette to an environmentally satisfactory state.

I was also told that thought was being given to expanding the program to include full-time positions, for distinguished people in academia or industry, in state government. These positions would last for only 1 to 2 years. During that time the particular individual or group would investigate issues at the request of either the Legislature or the Governor.

7. In response to Problem E, the Governor in 1968 by executive order created 14 Administrative Districts to provide a common set of district boundaries for all state agencies.* This resulted in a number of things happening. First, this meant that information could be gathered on a common basis to provide compatibility and consistency; and, hence, greater value to all state programs. This information did in fact provide a basis for state programs during the 1971-73 biennium.

*See map following page

OREGON DISTRICTS



— District boundary

— District number

Portland

Salem

Willamette River

Second, the Administrative District has developed as a valuable mechanism for local governments to pool resources to get a job accomplished. This is especially true in planning areas where money is scarce and where Federal programs generally require planning at the local level before Federal funds will be granted.

Third, the Districts have provided the basis for the organization of District Councils. These Councils are voluntary associations of local governmental units organized to improve cooperation, coordination and planning. The District Council also is intended to provide a mechanism to improve state responsiveness to local needs and priorities by providing opportunities for local participation in defining district goals and objectives for state programs. A guide for the organization and powers of a District Council is contained in the appendix.

To date District Councils have not been a huge success in Oregon. However, that picture is apparently changing as more and more local officials realize the advantages and need to operate at a regional level.

Recommendations and Evaluations

At the present time Oregon is still faced with many problems. There does not exist a state planning agency. In fact, planning capabilities do not exist in many state agencies. As a result there does not exist a long-range state plan, or an integrated short term state plan. A sound system for coordinating economic growth and concern for the environment does not exist. Certain key issues such as land use controls, especially on the Oregon coast have not yet been resolved. Many of the efforts of the Governor's Office in providing interagency coordination have

not been formalized. This is the Governor's last term and it is questionable whether his programs would be maintained or expanded upon by his successor. Although a reorganization of state governmental structure has begun it is not completed. Many small boards and commissions still exist.

On the plus side the typical Oregonian has a tremendous concern for the quality of his environment. Oregon industry has generally been cooperative in attempts to control pollution. The Department of Environmental Quality is beginning to exert itself. As a result, major environmental gains have been made, e.g. the cleaning up of the Willamette River.

A couple of points should be made for Minnesota's use. First, it should be stressed that much of Oregon's success with regard to environmental issues may be traced to the strong role played by the Governor and his office. And, second, individual programs such as the Department of Environmental Quality's CUP program, Tax Credit Plan, Permit System, the Governor's Advisory Committee on Environmental Science and Technology, or the Lou Harris Survey would be worth considering for Minnesota.

RESOURCES

A Guide for Organizing a District Council

Department of Environmental Quality Statutes and Regulations

Department of Environmental Quality. Tax Relief Forms and Summary
of Application Procedures and Laws

Department of Environmental Quality Waste Disposal Permit (new & renewal)

Department of Transportation Proposed Objectives, Accomplishments
and Activities for 1973-75 Biennium

Environment and Natural Resources, Summary information on agencies,
committees and compacts.

Environmental Quality in Oregon 1971

Governor McCall's Statement on the Legislative Record in Protecting
Oregon's Environment

Louis Harris Survey of The Public's View of Environmental Problems
in the State of Oregon

Report on Noise Pollution

State of Oregon District Planning Program

The Return of a River

INTERVIEW REPORT

DATE: July 27, 1972

INTERVIEWER: Harold Sheff, Kent Larson, Fred Neal

NAME: Kessler Cannon

TITLE: Governor's Assistant for Natural Resources

ADDRESS: 240 Cottage Street
Salem, Oregon

TELEPHONE: 503 - 378-3109

FUNCTION: Coordinates environmental planning in the State of Oregon

SUMMARY:

1. The Oregon approach was to tackle each problem individually - 1967 water - 1969 air - 1971 solid waste and noise -
2. DEQ has a Commission that serves at the pleasure of the Governor (only one that does). The Governor has named himself as Chairman of that Commission. Reason this was done was to make the Commission responsive to the People through the office of the Governor. The staff is independent, L. B. Day, the Director, is selected by the Commission.
3. Cannon would like to see DEQ handle all environmental problems, however, that does not appear politically feasible at this time. At the next session the issue of where to put land use planning will arise, likelihood it may go to DEQ.
4. At the present time the State of Oregon issues a single permit to discharge wastes. This is done by DEQ. The Department coordinates the inputs of all agencies concerned with the issuance of the permit, and then based on the collective data denies or issues the permit.
5. Oregon has established a tax credit program whereby the DEQ may allow from 0 to 80% of the cost of any required pollution control equipment to be deducted from property tax or corporate excise tax. To date 50 million has been credited over the last 5 years.
6. Associated Oregon Industries is a very powerful and successful lobby for Oregon business interests. It is well run and well financed. It has a pro development policy but has been willing to go along when pushed.
7. To date only 2 or 3 industries have closed down due to pollution requirements. However, these industries were on shaking ground to begin with. Boise Cascade is the main source of trouble and the first industry that has been taken to court. They operate a number of outdated inefficient wood processing plants and are naturally reluctant to upgrade them. Cannon feels most other pulp processes have been anxious to clean up.

8. Oregon Environmental Council is a very effective citizen lobby for conservative groups, 150 groups, 5000 people are members. It is headquartered in Portland.
9. Lumber is the number 1 industry in Oregon and the number 1 polluter. Tourism is the number 2 industry.
10. The present unemployment figure is 6% however, that figure does not adequately reflect the state of the economy. Cannon feels the State is having a good year. Oregon is a seasonal state. Timber shuts down in the winter, as does tourism.
11. Oregon coast issue of tourism and environment. Realizes the need for coastal people to make money during the short season, however, the coast is a very fragile and finite eco-system that must be carefully controlled or be destroyed. Land use planning will be the mechanism for control.
12. The population of Oregon has increased 3% in the last decade, however, the increase has been centered in the Wilamette Valley from Portland, to Medford. Portland, Salem, and Eugene have seen tremendous increases in population. However of the 36 counties in Oregon 12 have seen an actual decrease in population.
13. A backlash group has been organized called WETA, it is composed of industry, labor unions, and newspaper publishers. It's goal is to put pressure on DEQ to go easy on environmental concerns when they clash with economic considerations.
14. Politics -
Senate Democrat, House Republican, 1965 to present the legislature has been controlled by a conservative coalition. Democrats are the dominant party in Oregon but they are fractionalized and independent (200,000 more). The legislature swings towards development but will go for conservation when issues are raised by the population of Oregon.
15. Oregon has no active programs for seeking industry (tax advantages, etc.) the policy has been industry comes on Oregon's terms. All pollution controls must be approved prior to construction. Developers have been escaping any controls to date.
16. Oregon does not have an integrated DNR, historically the various resource agencies have been independent Boards, especially Forestry. In fact the membership requirements for the Board have been built into the enabling act, all timber people, any outside experts are ex officio. A great deal of time and money is spent on keeping this Board separate and under the control of private interest groups.

Traditionally the Governor proposes a DNR at each legislative session, but each time defeated, prospects do not look significantly better this year.

17. All environmental coordination is done through Cannon's office. The first Thursday of each month the Governor and all heads of agencies concerned with the environment, meet to discuss policy, planning and common interests. (Committee on Natural Resources and the Environment)
18. Cannon feels it is crucial to bring labor unions into the process at some level, maybe the bargaining process. The point being that the employees will have some say in pollution control and its effect on their jobs etc.
19. Power Plant Siting -- at the present time utilities are required to pay \$100,000 a year for power plant siting research. The industries break that sum down based on their % of total power used in the State. The process begins by a utility presenting a letter of interest to site (+ \$5,000 filing fee). The letter must identify the location and needs to be satisfied by the plant. The Committee has one year to investigate the proposed site and propose any alternative sites. The Committee had already prepared a survey that identifies potential sites by areas, setting priorities, and prohibiting certain areas from any sites. (Map where can't put a site, where you can, and priority marking where one is needed).
20. 53% of the land is owned by the Federal Government, 3% by the State. 62 million acres of which 27.6 million is commercial timber land. 161 areas of not less than 5000 acres are virgin.
21. The State employs 32,000 employees. There are 283 Boards or Commissions. The state has a weak executive, strong legislature. All bds/c. are independent and quite small, the usual membership is 3. The State budget was 708 million, with a budget of 1 billion for 1973 expected. 40% of the State budget goes to local problems. 190 million goes to environmental agencies (out of general fund). Human Resources is the largest agency employing 9000 people.
22. Oregon State now has an advisory committee on science and technology. Their major work has been an inventory of resource levels in Oregon.
23. CUP -- Clear Up Pollution program of DEQ. This is given to businesses that have a good pollution record. (place logos on vehicles etc)

RECOMMENDED FOLLOW UP:

The following ideas are worth pursuing: CUP program (23), power plant siting (19), advisory committee on science and technology (22), environmental coordinating committee (17).

INTERVIEW REPORT

DATE: July 27, 1972

INTERVIEWER: Fred Neal, Victor Arnold, Kent Larson

NAME: Robert Logan

TITLE: Director, Division of Local Governmental Relations,
Oregon Executive Department

ADDRESS: 240 Cottage Avenue
Salem, Oregon 97005

TELEPHONE: 503 - 378-3732

FUNCTION: The Division of Local Governmental Relations, since the last session of the Oregon legislature eliminated the Program Planning Division, has been serving also as the State's de facto planning agency. Thus, it coordinated grants-in-aid applications from local governments to Federal and State programs and also coordinates the formation of regional inter-governmental planning bodies: The Councils of Governments.

SUMMARY:

Oregon has 1500-1800 units of governments. To expedite State relations with these governments, Oregon was divided into 14 Administrative Districts, the lines of which are to be used for the planning and services of state agencies. Each District may form a regional Council of Governments COG, to facilitate Regional Planning needs and meet HUD requirements. All Districts have COG but two still have not been staffed.

Oregon has no statewide land use plan. There are broad projects underway, however, involving several regional GOCs working together. Most important is Project Foresight. This is an effort at comprehensive planning for the Willamette River Basin which holds the large majority of Oregon's population and industry, beginning with Transportation, Natural Resources, and Land Uses. Logan's office is developing scenarios of slides and maps which graphically depict the future with 1) projected trends and with 2) shifts in policy. This will hopefully increase public awareness of the need for planning and the formulation of goals and objectives. Another regionwide project is the Oregon Coastal Development Commission.

COMMENTS:

Logan feels it is a mistake to tie a state planning body closely to the budget department, especially in its early stages where it needs to create goals and

objectives free from established program. The need is first for policy, then programs can be fit into the budget.

RECOMMENDED FOLLOW UP:

Logan waxed enthusiastic about Georgia's Planning ACT (1066), and suggested we look at it.

INTERVIEW REPORT

DATE: July 27, 1972

INTERVIEWER: Victor Arnold, Harold Sheff

NAME: Sam Haley
TITLE: Director
Department of Transportation

ADDRESS: 307 State Highway Building
Salem, Oregon

TELEPHONE: 503 - 378-6870

FUNCTION: Coordinates activities of the five autonomous divisions making up the Department of Transportation.

SUMMARY:

1. The department is made up of the formerly separate departments of Aeronautics, Highways, Mass Transit, Ports, and Motor Vehicles. This was accomplished by legislative act. The first four divisions retain their separate Boards and all discretionary powers. The division of Motor Vehicles is headed by a Director appointed by the Governor.
2. The Department of Transportation's primary function is to make recommendations to the Governor about transportation policy and to act as a coordinator between discussions on matters of interdiscussion impact. The role of coordinator also involves acting as a liaison between the discussions and various outside agencies i.e. Department of Environmental Quality; EPA, ECD, and any other Federal, Local or State agencies. The DOT has no regulatory authority itself, it is just an umbrella over the 5 discussions.
3. The present staff includes 11 people, mostly planners, who link up with planners and etc. contained in the actual divisions. Planning apparently means economic-social and environmental. The department is involved in developing a planning picture for the Willamette Valley based on a continuation of present trends, this task is viewed as arraying the options or trade-offs that will be necessary to achieve or maintain various levels of environmental quality.
4. The Governor has established a "Transportation Council". The Council is chaired by the Governor and includes all discussion heads, or chief administrators of Commissions whose agencies have any impact on transportation. The purpose of the Council is to establish and maintain a dialogue on any policies concerning transportation in the State. The Council is relatively new, and it is only in the last few months that it is beginning to face crucial issues.

5. Haley made the point that there does not exist a central planning agency in Oregon. However issues are requiring cooperation (i.e. "Council"); especially with regard to planning requirements for federal funds and local units need for a single cohesive state policy on various matters.
6. It was pointed out that planning capabilities within the various divisions varied greatly. For instance Highways has a very sophisticated planning program while parts have almost nothing.
7. Haley felt that the key to the success of any program was the Governor's commitment. It is only when planners are plugged in with decision makers that any meaningful policy decisions can be made. Haley credits most of Oregon's success to G. McCall. Haley feels that the only way the present level of cooperation can be maintained or improved is by the formal creation of statutory councils whose function is to bring together and coordinate the various agencies and decision makers. At the minimum it would highlight areas where the various groups would be willing to cooperate or not cooperate.
8. The Port division has developed a study of the lower Columbia River in conjunction with the Oregon Coastal Conservation and Development Commission. The study involves an impact statement (environment, development, industry, etc.), and a survey of possible sites for industry, ports, development and etc.
9. Apparently there is not a state requirement for the preparation of an environmental impact statement--no guidelines for state environmental standards.
10. Constitutional Home Rule Charter Cities and Counties -- strong desire to maintain local control and autonomy especially certain areas + strong referendum powers.

INTERVIEW REPORT

DATE: July 25, 1972

INTERVIEWERS: Victor Arnold, Harold Sheff, Fred Neal, Kent Larson

NAME: Kenneth Spies
 TITLE: Deputy Director
 Department of Environmental Quality (DEQ)

ADDRESS: 1234 S. W. Morrison
 Portland, Oregon 97205

TELEPHONE: 503 - 229-5696

FUNCTION: Number 2 man in Department of Environmental Quality. Spies is an engineer, and probably has duties involving technical aspects of environmental quality control.

SUMMARY:

1. History of DEQ:

- successor to Sanitary Authority created in 1938
- 1958: add air quality
- 1967: solid waste (shared with Department of Public Health)
- 1969: DEQ created, separated totally from Health department.
- 1971: noise pollution responsibilities

2. Permit System: presently for water, but as of 1 January, air also.

- much paper work, but "most effective tool" for compliance
- present implementation plan OK'd by Environmental Protection Agency (EPA)
- will be working directly with EPA - personnel in office.
- permit applications reviewed by DEQ and EPA representatives (14 days for comments)
- appeals handled by DEQ commission. (20 days to appeal) only one commissioner, hearings officer, etc., necessary for hearing, but all members must pass on it.
- appeals reviewable in courts thru Administrative Procedure Act.
- permit schedules: stipulations for compliance
 new installations - meet req's before build.
- permits issued for up to 5 years.
- filing fees: none for water, but exist for air. Fees are dependent
 on operation

3. Tax Incentives:

- certificate for credit on improvements
- allowable against property or income taxes
- amounts to about 50% of total costs

4. Planning:

- project foresight (for Willamette Valley) DEQ involved slightly.
- Federal Water Quality Control Act, coordinated with local Council of Government (COGS)

- works with Highway Commission: impact statements - first evaluated by Regional Air Quality districts for approval, then DEQ.
- certain amount of "negative land use control": accomplished by non-issuance of permits-this is only means of controlling land use.
- planning programs entirely up to individual agencies, but coordinated through McCall and Cannon.

5. Organization: (Much like PCA)

- commission: rule making and law enforcer board
- director: program coordinator
- staff: under director
- divisions: air, water, solid waste, lab and research (service to main 3) field services (regional staff), administrative services division, director's office.
- 125 to 130 staff

6. Budget:

- \$3 to \$4 million per biennium

7. Spies' personal view:

- look for relationship with DNR, though keeping separate from DEQ.
- interagency relationships function through informal arrangements--- probably most efficient.
- would like to see air regions as arms of the state; this would make for coordinated effort.

COMMENTS:

Spies represents engineer's perspective regarding environmental regulation.

FOLLOW UP RECOMMENDATIONS:

Future correspondence with L. B. Day --- he's probably more policy-oriented, and a better spokesman for DEQ.

INTERVIEW REPORT

DATE: July 28, 1972

INTERVIEWERS: Harold Sheff, Fred Neal, Kent Larson

NAME: Allan Mann
TITLE: Industrial Development Manager
ADDRESS: Room 110, Yeon Building
522 S. W. 5th Avenue
Portland, Oregon 97204

TELEPHONE: 503 - 229-5535

FUNCTION: Promotes the development of industry in the State of Oregon.

SUMMARY:

1. Once a business has expressed an interest in locating in Oregon, or has been recruited to locate in Oregon, Mann aids them in obtaining a site. It is in cooperation with Railroads, Bank, Bell Telephone, Natural Gas, Electric Companies, or any other agency or business that might be involved. An informal meeting takes place at this early stage, and those groups not interested or applicable will back off.
2. 70% - 85% of the population is on 15% of the land in Willamette Valley, which is also a fragile area for air pollution. The Department makes all possible efforts to locate businesses out of the Valley. Many industries cannot do this due to their market orientation. "Foot loose" or non resource base national distribution types of industries can, however they usually want to locate near the Universities in the Valley.
3. Unfortunately the State does not have any incentives available to influence the location of industry.
4. There does exist a State Legislative Task Force on Economic Development, with the objective to develop mechanisms to influence growth patterns. However nothing has happened yet.
5. There are 2 main utilities in the State, Portland General and Pacific Power and Light. Both of these groups have lobbied in the past to ensure that industry does not shift out of their power areas. The two main Banks are 1st National and U.S., both have branches statewide, as a result they are interested in balanced growth. Bell Telephone maintains an active program of aiding economic development.
6. It should be noted that no comprehensive long term planning is done anywhere, are no funds for any type of research.

7. Mann pointed out that McCall's zero growth policy was really not true, Oregon was very anxious and willing to accept industry and the jobs it brings.
8. As a general rule all industries are welcome, the constraints are put on by DEQ.
9. Mann feels that planning and operations should be done in the same office. He did not feel that there was any magic key or that all problems were close to being solved. To date the most significant factor has been good solid informal relationships between groups instigated by the Governor's office.

RECOMMENDED FOLLOW UP:

This report should be read in conjunction with the siting procedure put out by the Department of Economic Development.

INTERVIEW REPORT

DATE: July 28, 1972

INTERVIEWERS: Kent Larson, Harold Sheff, Fred Neal

NAME: Don Wilner
TITLE: Attorney at Law
ADDRESS: 900 Corbett Building, Portland, Oregon

FUNCTION: Former Oregon State Senator

SUMMARY:

1. Politics - Governor McCall apparently did not actually originate any bill dealing with the environment during the last session of the Oregon legislature.

Feels that all policy making or trade-offs between the environment and the economy ought to be done by legislature, not the Governor.

Last session was the pro environment session. Land use ought to be key issue of the next session, probably not, due to its unpopularity with most interest groups.

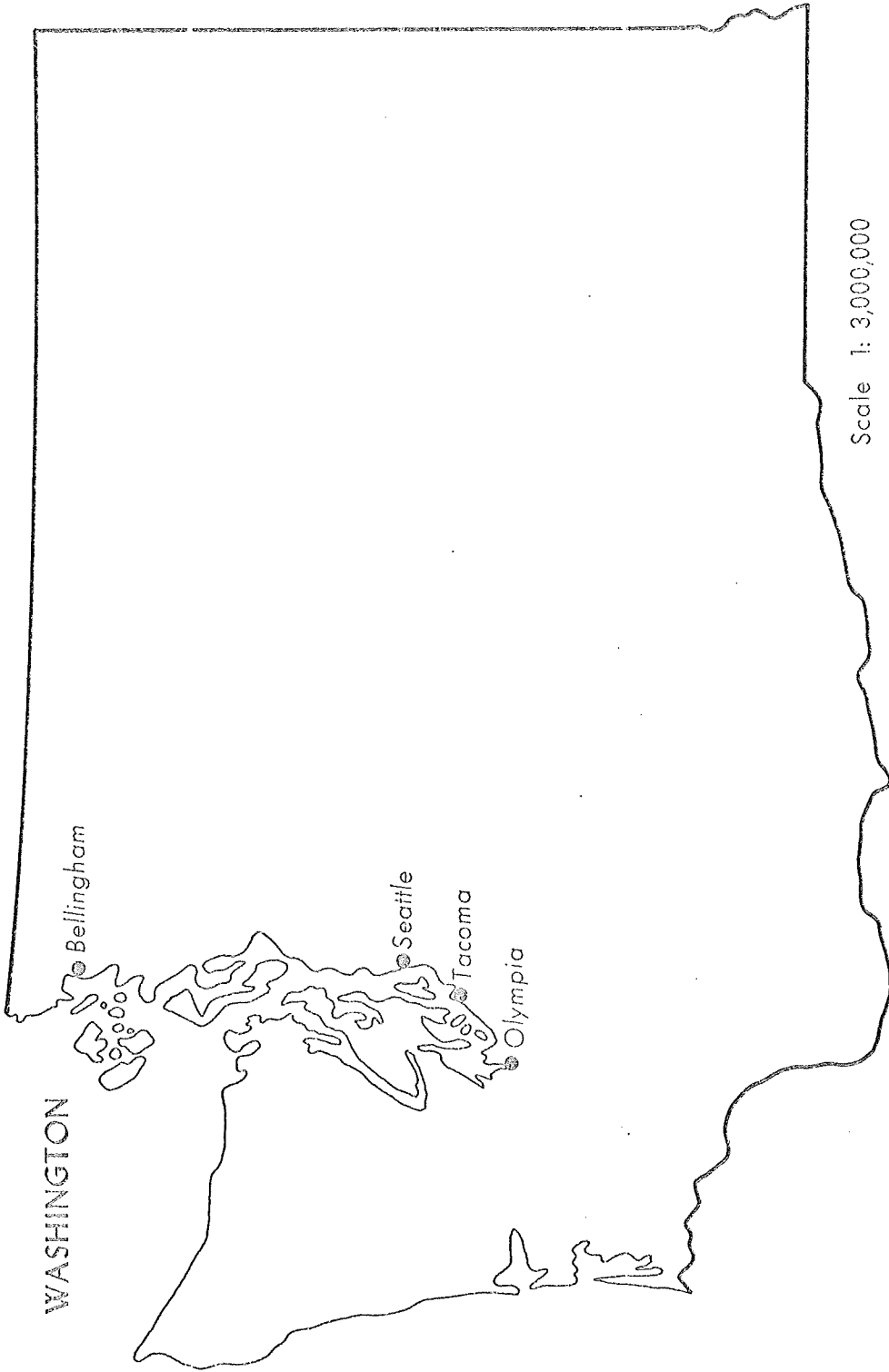
2. Population - apparently the population has mixed feelings concerning the environment. People and legislators are perfectly willing to enact controls over other people. Especially true for Willamette Valley where the majority of the population is. Felt that city people have a greater concern for saving the environment.
3. Discounted the role of the Governor. Strong points of McCall - publicist, ability to select excellent people as a staff, very likeable guy, weak points not a good administrator or thinker.

COMMENTS:

Mr. Wilner was not terribly cooperative, and as a result the interview was not particularly fruitful.

CHAPTER IXWASHINGTONSTATE PROFILEGeographic and Population Factors

Washington state is located in the extreme northwest corner of the United States, bounded by the Pacific Ocean on the west, the bay of Juan de Fuca and Canada's British Columbia on the north, Idaho on the East, and Oregon on the South. The Pacific coastal plain extends the length of the state, being very narrow (20-30 miles wide) in the north, and widening out to merge with rising land in Southeastern Washington. Recreation and fishing activities prevail. Rising abruptly from the coastal plain in the northwest part of the state, the Olympic Mountains display rugged features and rain forests. Farther east lies the heavily industrial and populated Puget Sound region, developed on soil made fertile by the numerous rivers running into the Sound. Southwestern Washington consists of ranges of hills rising from the coastal plain and gradually continuing into the Cascade Mountain foothills; this region has many rivers and streams, fertile valleys, some prairie, and generally heavy forestation. In the central part of the state, presenting a natural barrier between the eastern and western sectors of the state lie the Cascade Mountains. They rise to an average height of 8,000 feet and feature many lakes and streams amidst the forested terrain. Stretching east from the Cascades to Idaho lies the Okanogan Highlands, a hilly region of up to 5,000 feet elevation. South of that is the Columbia Plateau, which is generally flat and arid, except for the coulees (gorges) which cut through the terrain. Finally, in the southeastern corner of Washington lie the Blue Mountains, with altitudes of up to 7,000 feet.



The area of Washington state is 68,192 square miles, or 42.7 million acres. Of this total, the federal government owns approximately 29%, the state owns 9%, Indian-owned lands comprise 6%, and the remaining 56% of Washington state is privately held. Seventy-two percent of the state is forested while 2.3% (1,622 square miles) is water-covered. The 157 miles of Washington coast along the Pacific Ocean includes 3,026 miles of tidal shoreline.

The 1970 census has shown Washington's population to be 3,409,169, representing an increase of 19.5% in the last decade (compared to an increase of 13.3% nationally in the same time period). The rapid economic expansion in the state during the late 1960's was reflected in population gains; about 50 percent of the population growth during the 1960-1970 decade occurred in the years from 1967 through 1969. Two factors in particular account for the rapid growth: net migration into the state (in excess of one quarter million people during the decade), and natural increases from an excess of births over deaths. The state is predominantly urban, with 72.6% of the total population living in cities of over 2,500 persons. Urbanized areas have grown 38.5% in the past decade, urban growth is up 27.4%, and rural areas have increased only 2.5% in total population. In the nation as a whole, urbanized areas grew by 24.6%, urban population by 19.9%, while rural population actually decreased by 0.3% between 1960 and 1970.

Washington's population is expected to increase in the foreseeable future even though growth rates have declined, and probably will continue to do so. In large part, the growth rate decline is due to economic conditions, which have substantially reduced net migration into Washington.

WASHINGTON

The State
Size of Place
Standard Metropolitan
Statistical Areas
Urbanized Areas
Places of 2,500 or More
Counties

	Population										Households			Population in group quarters	
	All persons							Persons 14 years and over - Percent married		Persons 18 years and over - Percent male	Number	Percent change 1960-70	Persons per household	Number	Percent of total
	Number	Percent change 1960-70	Percent Negro and other races	Percent under 18 years	Percent 18 to 64 years	Percent 65 years and over	Fertility ratio ¹	Male	Female						
The State	3 409 169	19.5	4.6	34.0	56.5	9.4	364	65.3	63.6	49.0	1 105 587	23.6	2.98	118 022	3.5
SIZE OF PLACE															
Urban	2 476 468	27.4	5.4	32.8	57.6	9.6	335	64.1	61.2	48.4	820 497	29.4	2.89	103 586	4.2
Urbanized areas	1 873 418	38.5	6.2	33.1	57.8	9.1	334	64.2	61.4	48.5	621 681	39.6	2.90	68 950	3.7
Central cities	909 550	2.6	9.6	28.2	58.7	13.0	300	61.7	55.5	46.7	339 679	8.6	2.59	29 375	3.2
Urban fringe	963 868	106.7	2.9	37.6	57.0	5.4	365	66.7	68.1	50.5	282 002	112.9	3.28	39 575	4.1
Other urban	603 050	2.2	2.9	32.1	56.8	11.1	338	63.8	60.4	48.1	198 816	5.3	2.86	34 636	5.7
Places of 10,000 or more	377 766	1.3	3.1	30.7	58.2	11.1	323	62.4	58.9	48.3	127 096	5.5	2.79	23 070	6.1
Places of 2,500 to 10,000	225 284	3.6	2.6	34.4	54.5	11.1	363	66.4	63.0	47.9	71 720	5.0	2.98	11 566	5.1
Rural	932 701	2.5	2.7	37.2	53.6	9.0	371	68.6	70.5	50.4	285 090	9.5	3.22	14 436	1.5
Places of 1,000 to 2,500	112 738	2.6	2.0	33.6	53.1	13.3	370	67.0	65.7	49.1	37 491	7.0	2.91	3 504	3.1
Other rural	819 963	2.5	2.8	37.7	53.9	8.4	371	68.8	71.2	50.6	247 599	9.9	3.27	10 932	1.3
STANDARD METROPOLITAN STATISTICAL AREAS															
Portland, Oreg.-Wash.	1 009 129	22.8	3.8	33.0	56.2	10.8	332	67.3	61.2	46.9	341 505	26.9	2.89	20 910	2.1
Seattle-Everett	1 421 869	28.4	6.0	34.0	57.5	8.5	338	66.0	62.4	48.0	473 222	31.5	2.94	28 550	2.0
Spokane	287 487	3.3	2.5	33.6	55.3	11.1	335	64.4	59.9	47.5	93 681	6.7	2.93	12 585	4.4
Tacoma	411 027	27.8	7.0	33.2	58.5	8.2	354	59.8	64.9	52.8	123 421	29.7	3.02	38 008	9.2
URBANIZED AREAS															
Portland, Oreg.-Wash.	824 926	26.6	4.4	31.8	56.9	11.3	327	67.0	59.7	46.3	286 578	31.0	2.82	18 125	2.2
Seattle-Everett	1 238 107	43.3	6.6	33.2	58.1	8.7	327	65.4	61.2	47.8	418 431	46.2	2.90	26 375	2.1
Spokane	229 620	1.2	2.5	33.0	54.8	12.2	337	65.6	58.9	46.3	78 182	4.5	2.85	6 668	2.9
Tacoma	332 521	54.7	8.1	32.3	59.4	8.4	353	58.2	63.7	53.2	100 616	45.4	2.96	34 544	10.4

Economic Factors

The economy of Washington is based primarily upon forests, agriculture, and hydroelectric energy, with the exceptions of Boeing Aircraft and atomic power at Hanford. The state's forests support lumber and plywood mills, pulp and paper processing plants, and related lumber-product industries. Rich valley and plains agriculture yields wheat and other field crops, horticultural products, including apples, and livestock, dairy and poultry. The numerous rivers and streams of Washington's mountainous terrain provide hydroelectric energy for electrochemical and electro-metallurgical industries, particularly aluminum smelting and refining. The rapid expansion of aerospace activities in the latter part of the 1960's created a huge industry uncommon in Washington's typically resource-based economy. Although recent setbacks in the industry have been devastating, the role of aerospace in the state's economy is of great magnitude. Additionally important economic activities in Washington state are fishing, mining, manufacturing, trade, and tourism. Boeing Aircraft is Washington's largest employer, while Lockheed, Weyerhaeuser, St. Regis Paper, International Paper, and Pacific Car and Foundry represent other huge employers.

Unemployment in Washington in 1970 stood at 7.9% for the entire state. Estimates have it that the level had risen to about 13% during the height of the aerospace cutbacks of recent experience. Seattle and Tacoma had relatively high unemployment rates in 1970: 8.1% and 8.5% respectively for the urbanized area. Below state average were the Spokane and Portland (Oregon) areas, where 7.0% and 6.0% respectively were unemployed.

Washington's reliance on out-of-state sales of resource-rich products makes the state dependent on the national economy. It is predicted that recent economic declines will stabilize in fiscal year 1972, and that fiscal year 1973 will witness a resumption of moderate economic growth. Such projections assume growth of the national economy and increases in aerospace activities.

The late 1960's brought an unprecedented era of great environmental consciousness to Washington. Boeing aerospace activities were at a peak and the population crush hampered traditional style. Although Washingtonians are still conscious of environmental quality, their quest has been limited somewhat by economic desire--perhaps jobs are more valued than pure air or water. Regardless of its citizen awareness, Washington has pollution problems, and all of them have environmental impacts.

Various human activities have been detrimental to the quality of fresh water in Washington's rivers, streams, and lakes. Sewage and storm water are sometimes combined in the same disposal system. Sewage overflow, pulp wastes, herbicides, pesticides, agricultural feedlot drainage, and logging wastes pollute state waters. The gradual shift from hydroelectric to thermal and nuclear power sources has increased thermal pollution. Forest harvest practices have environmental impacts through their reduction of erosion barriers and stream shading. Thermal pollution is increased by power plant discharges and damming; such pollution greatly reduces fish harvests. In general, the abuse and overuse of water has become a definite problem in Washington state.

Water resources are another matter of concern. Besides the fact that water impounding and withdrawals have detrimental effects upon river water quality, irrigation farming places a high demand on existing water resources. Expanded population and consumption have caused increased demands for recreational, domestic, and industrial uses of water.

Numerous contaminants combine to affect Washington air quality. Motor vehicle fumes, industrial and processing losses, industrial fuel uses, home heating, refuse disposal, open burning, field burning, and slash burning in forests pour pollutants into the atmosphere by the ton. Odors are caused by chemical manufacturing, dumps, kraft mills, and agricultural operations. During warmer seasons, winds are light and stagnation occurs in the valleys--particularly the Puget Sound area of high industrialization. During cooler winter months, the effects of pollution are reduced by precipitation and turbulence.

Washington's rapid increases in population, combined with burgeoning consumption, have multiplied problems of solid waste disposal. Simultaneously, public reaction against smoke, odor, and unsightliness has become more pronounced. The mounting problems of solid waste disposal are further aggravated by the burning bans which have become commonplace throughout the state.

The coastal and Puget Sound areas of the state present additional environmental problems. Lack of management in development, oil and mineral exploration, landfill and dredging operations, plus littering and erosion have had detrimental impacts upon the sea coast. Seventeen hundred miles of Puget Sound shoreland have been commercially developed to an extent that underwater resources have been detrimentally affected.

These developments are potential sources of conflict regarding public versus private use of resources.

Washington's water resources include over 50,000 miles of rivers and 8,000 lakes. A considerable amount of development occurs without consideration of water quality. Undoubtedly river management practices need be improved within the state.

The extractive mining industry in the state creates unique problems. Many unreclaimed open pit mines and quarries exist, and are utilized only for garbage dumps. Removal of minerals alters the environment by reshaping the landscape and subsurface drainage patterns. The huge costs involved in rejuvenation of mine sites has thus far thwarted this type of environmental progress.

Economic development functions in Washington are handled by the state's Department of Commerce and Economic Development (DCED). This agency works closely with state environmental agencies and regional planners in its industrial siting activities. Prospective builders are sent pollution control standards and regulations along with promotional information. DCED has made it a continuing policy to disseminate information about available pollution control technology to insure that developers will design new industrial installations in compliance with environmental standards.

Although DCED works with the Department of Ecology and other environmental agencies in the state, its basic function involves strong support of economic and industrial expansion. Recent economic conditions have prompted citizens to share the DCED concern for new jobs and new industry. Developmental policies, however, seem to ignore some environmental

matters. At the present time, controlled growth or no-growth concepts have not been incorporated into DCED policy. The DCED has not made any attempts to encourage industrial development in outstate, underdeveloped regions. Although such development is beneficial, both socially and environmentally, the DCED contends that the state cannot realistically influence site decisions because industrial choices are made solely on economic bases.

Washington takes a similarly economic view in its development of tourism. DCED likes to encourage tourists, but addresses its promotional efforts toward the affluent. Since the state cannot advertise to everyone, the agency has opted to encourage the large-spending tourist to seek "clean" activities in the state.

Political Factors

The bicameral legislature of Washington state consists of a 99 member House of Representatives and a 49 member Senate. The House is Republican by a three-member margin (51-48) while the Senate has a Democratic majority of nine (29-20). Party lines in the Pacific northwest seem to be somewhat variant from traditional national Republican-Democratic politics, although the general trend is for Republicans to be more economically conservative than the Democrats. The legislature is predominantly urban, as is the population itself.

Environmental consciousness on the part of the electorate reached its zenith in the last part of the 1960's. Washington, with its grandeur and wilderness beauty, had a very strong interest in environmental preservation that is shared by other states in the Pacific Northwest.

The fast economic growth rates associated with aerospace development and the population crush, especially in urban areas, served to heighten this interest in both the general population and the legislature.

Numerous interest groups launched environmental campaigns and supported lobbying efforts. Perhaps the most effective has been the Washington Environmental Council (WEC), which is a pro-environment coalition of various groups including the Izaak Walton League and the Sierra Club. Their bonding together into a single group has greatly enhanced the lobbying activities and political visibility of environmental interests.

The WEC has recently compiled legislative ratings to evaluate the "best" and "worst" legislators in the state according to voting records on environmental issues. Political affiliation seems to have little to do with environmental stance, but there does seem to be a correlation between urban and rural legislators. Practically all of the "best" legislators are from King County (Seattle), whereas the "worst" tended to represent the less urbanized sectors of the state. Such a result evidences the strong environmental pressures found in the urban centers, particularly Seattle, where the population gains and economic chaos have been most evident.

The Washington legislature responded to the public's environmental awareness with several pieces of legislation. Noteworthy laws passed in 1970 include the creation of an environmental "superagency," the Department of Ecology, and the first thermal power plant siting law enacted in any state. 1971 witnessed more environmental laws, including an innovative Coastal Waters Protection Act and a State Environmental

Policy Act, patterned after its federal counterpart.

Although Washington has accomplished a great deal in environmental legislation, public interest in such matters has subsided to some extent. The WEC has noted in a legislative summary that the past legislative year, 1972, was not as productive to their cause as the years immediately preceding. It would seem that the environmental wave has crested in the legislature and that the bulk of the responsibility for environmental regulation has been entrusted to the newly-created Department of Ecology.

The Governor of Washington, Daniel J. Evans, has played a significant role in environmental regulation in his two four-year terms in office. When he was elected in 1964, Evans inherited an executive branch of government that was fragmented into numerous boards, commissions, and agencies where cooperation and communication were often non-existent. Evans, in an effort to strengthen the executive branch, appointed a Governor's Task Force on Executive Reorganization to make proposals for improvement. Published in 1968, the Report of the Task Force recommended revamping the existing structure into a strong centralized executive control of functionally organized activities. Citing the population crisis, increasing governmental service demands, and the change in intergovernmental relations operating on the state government, the Task Force recommended that state executive powers should be commensurate with the visibility and public expectations of the highest state offices. The recommendations included combining budgeting and planning functions under the Governor's office. This was accomplished in 1969 with the

creation of the Office of Program Planning and Fiscal Management. In 1970, the Task Force's recommendation for a consolidated, functionally oriented environmental agency was realized by legislative creation of a Department of Ecology and associated Ecological Commission. The remainder of the Task Force proposals included incorporation of consolidated agencies for Social and Health Services, Manpower and Industry, and Transportation.

In addition to his efforts toward implementation of the Task Force proposals, Evans created a Thermal Power Plant Siting Evaluation Council in 1969. His executive order was given statutory authority in 1970 as the pioneer thermal power plant legislation in the United States.

Evans has been elected Governor twice, with 55% of the vote both times. His strong interest in environmental matters was no doubt helpful in his victories, for environmental issues were central to public opinion in 1964 and especially 1968. Since the environmental consciousness of Washingtonians has lagged somewhat in very recent years, it is possible that his successor will be less aggressive in ecological matters.

STATE REACTIONS TO ENVIRONMENTAL PRESSURESProblems

The state of Washington has by no means been exempt from the environmental degradation that has plagued all state governments. Washington has found no panacea for environmental problems, but has recently implemented broad organizational changes that have improved efficiency and coordination.

A. Prior to the governmental revisions, Washington's efforts in environmental regulation were fraught with organizational problems. At that time, the executive branch of state government was a fragmented maze of councils, commissions, boards, and agencies. There was no strong executive control over state affairs. According to the 1968 Governor's Task Force on Executive Organization, the Governor had little or no control over many of the executive functions for which he was held responsible. He did not have an appropriate policy voice in certain vital areas of state government. Such organizational difficulties were thought to make the government unresponsive to the citizenry, since lack of executive coordination frustrated individual agency activities. Efforts in different directions added up to a relatively insignificant net effect on highly visible environmental problems.

The Office of Program Planning and Fiscal Management (OPPFM), created after the recommendations of the Task Force in 1969, published a pamphlet "Environmental Quality . . . A Program for Washington," which pointed out further organizational problems in the executive branch. It found fault with the traditional programs aimed at specific areas of concern, such as air quality, water quality, etc. OPPFM said that such

an approach "fails to recognize the strong interdependencies between various waste streams, appropriate regulatory measures, and the relationship between resource allocations and material balances which affect the environment." The publication pointed out the fact that narrow solutions to environmental problems often have backlash effects more serious than the original problem. OPPFM advanced a proposal for a "management approach" to environmental regulation, but offered no specific plan for organization or implementation.

B. The existing Washington approach, with its proliferation of small agencies and commissions had left the individual citizen with an ineffective voice in environmental decisions. Each agency seemed to have a self-defined functional jurisdiction which tended to be very narrow, since all of them enjoyed autonomy in their specialized fields. As a result, citizen grievances sometimes fell on deaf bureaucratic ears when the problem involved more than one agency's jurisdiction. The state had no effective and accessible channel for hearing and resolution of citizen grievances. Any decision of an environmental agency could be judicially reviewed under the state Administrative Procedures Act (R.C.W. 34.04), but the costs were prohibitive for average citizens.

C. The rapid growth rates of population and consumer demand in the late 1960's put pressures on public utilities for increased power generation. Washington's abundance of rivers and streams made her a national leader in hydroelectric power production, and nuclear power had naturally followed. It is well known that power generating plants have immense impacts on local ecology, economy, development, and population growth.

Washington knew that the economic approaches to plant siting taken by utilities can often lead to regrettable choices. The state was therefore faced with the task of formulating a workable scheme for controlling site selection of its new power plants.

D. Another area of concern in Washington is the so-called "one-stop" controversy. Utility companies have fought hard for a "one-stop" system, a procedural method of combining all the state agency considerations into a single evaluation forum. The idea behind the system is that it discourages the bureaucratic delays, repetition, multiplicity of efforts, and costs traditionally associated with permit issuance. Although the system seems valuable for its convenience, there exists a danger that one agency will completely dominate others, especially where that one is well established and heavily backed by private interests. Controversy has and will continue to abound over "one-stop."

Solutions

A. The efforts of the Governor's Task Force on Executive Organization first bore fruit in 1969 with the legislative creation of the Office of Program Planning and Fiscal Management (OPPFM). This body was established to integrally combine comprehensive planning and budgeting into a single executive level agency. The "Environmental Quality . . . A Program for Washington" pamphlet presented a status summary of environmental conditions in the state and stressed a "management approach" to resources and environment.

The legislature, in 1970, reacted to environmental pressure with the adoption of a "superagency" (R.C.W. 43-21A, see appendix) Department of Ecology (DOE). The new agency was patterned after the reorganizational structure proposed by Evans' Task Force. DOE assumed the functions of

four previously existing bodies: the Water Pollution Control Commission, Water Resources Department, Air Pollution Control Board, and the Health Department's Division of Solid Waste Management. The reorganization did not affect the statutory responsibilities of the Department of Natural Resources, which controls timber, state lands, and mining activities, nor the Departments of Fish, Game, Agriculture, or Parks and Recreation.

The structure adopted by the legislature places a director responsible to the Governor at the head of DOE, and a seven-member Ecological Commission appointed by the Governor in an advisory role (see organizational chart in appendix).

The director has been given administrative and supervisory powers, the power to adopt rules and regulations, and various investigatory powers. The present (and original) director of DOE is John A. Biggs. DOE was originally organized along the same pollution program lines as the predecessor agencies: air quality, water quality, solid waste disposal, and water resources. Biggs acquired money from the Ford Foundation to hire an organizational study done by the Stanford Research Institute (SRI). The SRI team, in cooperation with a DOE Committee, devised and recommended a new internal organization for the Department of Ecology. The unique structure, as proposed by the SRI team, was intended to integrate functions and programs of the previously separate agencies, integrate resource management and pollution control activities (as advocated by the OPPFM publication), and provide flexible programs to allow for future expansion of DOE responsibility. In addition, it was intended that the organization would provide capability for planning and new program

development, provide rapid and efficient public service, delineate clear lines of authority, and place and maintain expertise in functions where it was most needed. To meet these objectives, the SRI report recommended: (1) adoption of an organizational structure which integrates functionally related activities and provides separation of (a) present day, operationally oriented, service functions from (b) future oriented planning and new program development; (2) five regional offices to provide departmental services; (3) a well staffed Office of Planning and Program Development; (4) that environmental monitoring should be a major activity separated from surveillance and enforcement activities (although appropriate interfaces should be maintained); (5) that the director should seek additional funding; and (6) that further authority should be requested from the legislature for land resource management.

Biggs followed the primary recommendations of the SRI report (see organizational chart in appendix). Whether or not the structure adopted has, or will meet the SRI objectives on a practical day-to-day basis is somewhat debatable. Indeed, the organization has seemed to eliminate many of the effects of agency parochialism found in the former program-oriented system. In point of fact, however, the DOE retains informally many of the divisions of the recently consolidated agencies.

The DOE organization involves two primary branches: Public Services, which handles daily technical and five regional offices operations, and Administration and Planning, which provides supportive services and planning and program development. Executive assistant directors and assistant

directors are brought together with the director and deputy director in executive offices concerned with department-wide responsibilities. The new, functionally organized DOE has been staffed with civil service employees from the former program-oriented agencies.

The seven-member Ecological Commission statutorily (R.C.W. 43.21A.170) includes a representative of organized labor, one from business, and one representing agricultural interests. The remaining four members represent the public at large. All members are appointed by the Governor and are removable only for cause. The Commission supplies the director with "advice and guidance" in specified situations. R.C.W. 43.21.190 requires the Commission's assistance when DOE proposes a state position, an environmental quality plan, decides on financial grants, variances, legislative appropriation requests, etc. Meetings between the DOE director and the Ecological Commission are open to the public, and in particular, the director or representative of each of the following state agencies is specifically invited: Agriculture, Commerce and Economic Development, Fisheries, Game, Health, Natural Resources, and State Parks and Recreation. In addition to its advisory role, the Commission is given a veto power over the DOE action if five of the seven members disapprove by meeting memorandum.

It is the intent of the legislature that the Ecological Commission should give the DOE director inputs from government, business, labor, agriculture, and the general public. A matter submitted to the Commission is presented together with the proposed action. The Commission members then,

with the advice of any participating agency heads, reply with a written opinion to the director. The Commission may conduct any public hearings deemed necessary in connection with the proposed action. A Secretary is appointed by the DOE director to act as liaison between the Commission and DOE, to keep records of meetings, and to assist the Commissioners. Staff are supplied by the DOE director, who also reports yearly to the Governor about the advice rendered him by the Ecological Commission.

B. The Washington legislature created the Pollution Control Hearings Board (PCHB) (F.C.W. 43.21B, see appendix) at the same time as the Department of Ecology, although they are separate agencies. The PCHB represents an independent tribunal which allows citizens an appeal voice in environmental regulation. The impetus for creation of the Board was the strong position given to the DOE director. Business interests favored the creation of the quasi-judicial body to prevent arbitrary action by the director against industry, whereas the environmentalists wished to guard against his possible laxity in environmental protection. In addition to its citizen input function, then, the PCHB has a responsibility to correct inappropriate actions of the DOE.

Although the Hearings Board is part of the judicial process, only one of its three members is required to be in the legal profession. All members are appointed by the Governor with the consent of the Senate, and are required to be experienced or trained in matters pertaining to the environment. Not more than two of them, at the time of their appointment, may be members of the same political party. After initial

appointments to effect staggered terms of office, all members are appointed for six-year terms, and may be removed only for inefficiency, malfeasance, or misfeasance. Members serve on a part-time basis and are paid \$75 per day, plus expenses.

At the present time, the Chairman of the PCHB is Judge Matthew W. Hill, a Washington state Supreme Court Justice who reached constitutionally mandatory retirement (age 75) in 1969. Judge Hill's initial two-year term has expired, though he has continued the duties until a successor can be appointed and confirmed. The other two members presently serving are Walter Woodward, a noted conservationist and newspaper columnist, and James Shuhy, a retired vice-president of ITT Rainier.

Any decision of an administrative agency in the state of Washington is appealable to the state Superior (lowest) court system under the authority of the Administrative Procedure Act (R.C.W. 34.04). The Hearings Board has been made a more responsive vehicle for individual grievances. It is directed by the enabling statute "to provide for a more expeditious and efficient disposal of appeals" from any actions of the Department of Ecology and the local air pollution control boards. These local authorities may establish their own regulations, and they have the authority to impose civil penalties which are also appealable to the PCHB. Additionally, the Hearings Board was given the responsibility by the 1971 legislature (R.C.W. Laws, 1st Ex. Sess. 1971, CH. 180, the Shorelines Management Act) to participate in concert with three other appointees in a new Shorelines Hearing Board. The other members are the State Land Commissioner or his designee, a representative of the Association of County Commissioners, and an appointee from the Association of Washington Cities.

The PCHB is required by statute to meet at least once a month in formal sessions. The current Board perceives its role to be that of a "small man's court." Thus, it has been the practice of the PCHB to travel from town to town, depending upon the location of the grievance. Only one member of the board is required to be present at a hearing, but a written transcript is made available because at least two members need be present for decisions. The fact that only one Board member is necessary for a hearing allows the possibility of three simultaneous but geographically separate hearings. Attorneys are allowed at hearings but are not a necessity; usually attorneys are present only at the important cases. Hearings may be conducted either formally or informally. The practice has been to conduct informal hearings unless otherwise stipulated by the parties. If appeal is taken from the Board's decision, judicial review is de novo in the Superior Court for informal hearings, whereas the Administrative Procedures Act applies to formal hearings; the PCHB decision is then taken on record to the State Court of Appeals.

Promulgation of procedural rules and regulations was left to the discretion of the PCHB. After a survey of other administrative agency procedures, the Board established its procedural policy in W.A.C. 371-08-005 through W.A.C. 371-08-245 (See appendix). Rules can be adopted only after public hearings; the final draft is then sent to the Reviser of Statutes for certification and codification. Any amendments to the rules require the same procedure.

Funding for the Hearings Board is done through legislative appropriation. At present, the only staff person is a full-time secretary, but the primary

expense has been the cost of court reporters and records. Presently, funding for the Shoreline Hearings Board does not exist, so that the PCHB members do not receive compensation. Since the other three members of the Shorelines Board are salaried employees of state agencies, they suffer no economic losses for their time. The Hearings Board expects the funding issue to be disposed of during the next legislative session.

According to Judge Hill, the general policy of the PCHB has been to be "tough but fair" to polluters. Informal presentation of evidence and arbitration is sanctioned by the Board, to maintain its posture as the "small man's court." The Judge envisions that the role of the PCHB will be expanded in the future to that of an "Environmental Hearings Board," with jurisdiction over any state agency decision having an environmental impact.

C. Governor Evans took the initiative in the solution to the thermal power plant siting problem. In 1969, he created, by executive order, the Thermal Power Plant Site Evaluation Council (TPPSEC). The next year saw the legislature statutorily underwrite the Council (R.C.W. 80.50, see appendix). The Council consists of the directors (or their designees) of the departments of Ecology, Fisheries, Game, Parks and Recreation, Social and Health Services, Commerce and Economic Development, Natural Resources, Civil Defense, and Agriculture, plus the Interagency Committee for Outdoor Recreation, the Utilities and Transportation Commission, OPPFM, the Planning and Community Affairs Agency, and a representative from the county of the proposed site. The TPPSEC has, among others, the power to adopt

rules, develop environmental guidelines, receive and investigate "permit" applications, contract for studies, conduct hearings, report recommendations to the Governor, and prescribe monitoring. It should be noted that the Council's jurisdiction is limited to thermal power plants, excluding dam sites and nuclear reactors. Also, the site certification is subject to procedural safeguards (described in solution D, below) so that the fifteen member Council does not exercise unbridled "one-stop" authority. The Council does have an effective veto power over proposed sites, but sites it sanctions may in turn be vetoed by the governor and other "checking" mechanisms. One problem with the existing system is that the Council responds only to proposed sites; it has no independent planning capability for siting research.

D. The "one-stop" permit controversy in Washington is still in progress. Environmentalists fear that the concept will become "non-stop" instead of "one-stop" through neutralization of participating parties. The utilities, on the other hand, are fighting for the "one-stop" system to eliminate the delays and associated high costs caused by the present system. The "one-stop" system was incorporated in the 1970 Thermal Power Plant Siting Act, with the fifteen agency board having the siting prerogative. That Act, however, mitigated the dangers of "one-stop" with an effective gubernatorial veto, a "counsel for the environment" to protect the public interest for the duration of any proceedings, "independent consultants" paid by applicants' funds to evaluate proposals, and a freedom-of-information provision assuring full access to decision-making data. This system is intended to provide a "full fair stop" to meet the needs of both utilities and environmentalists.

A present facet of the controversy involves pressure from the private sector for expansion of "one-stop" to all environmental permit grants. Weyerhaeuser and other industrial groups are heavily in favor of a combination of DOE and the state's Department of Resources, or at least a "one-stop" permit agency composed of environmental agency representatives. At the present time, the state is seeking to find some sort of "full, fair stop" permit system. What the final outcome will be is as yet unknown.

INTERVIEW REPORT

DATE: July 24, 1972

INTERVIEWER: Harold Sheff, Victor Arnold

NAME: Professor William Rodgers
TITLE: Law Professor
ADDRESS: Condon Hall, University of Washington Law School
TELEPHONE: 206 - 543-6084

FUNCTION: Part of three man review team of SRI report and creation of Department of Ecology.

SUMMARY:

1. Professor Rodgers wrote the Washington Thermal Power Plant Siting legislation.
2. SRI was basically a structural move. Previously there existed the classic pattern of Board development, handling pollution issues on a completely independent basis. The SRI report was an effort by Biggs, the Director of the Department of Ecology, to provide a basis for his reorganization of the DOE. In point of fact the DOE retains many of divisions of the former agencies that presently comprise it.
3. Washington Department of Natural Resources handles forests, shoreline, etc. It is similar to the Federal Department of Interior with a heavy emphasis on promotional fervor. DOE is more EPA type of agency.
4. DNR director is an elected official, who wages a political campaign, backed by lumber concerns. Presently the State owns vast amounts of land which are run principally by DNR.
5. Bonnevillie Power Administration is the marketing agent for power generated by dams on the Columbia River. Its actions at the present time are completely autonomous from state controls. As a result it has a tremendous influence on land use through its granting of electrical energy and power plant siting.
6. In Washington the top industries are the extractors, i.e. pulp, lumber, mining. Also Local Port Authorities, and Army Corps of Engineers, both autonomous.
7. Washington Environmental Council is a pro environment group composed of various interest groups (i.e. Izaak Walton, Sierra Club, etc.). This group is very effective statewide and employs full time lobbyists.
8. Rodgers feels Evans is a good Governor who pushes as hard as possible for environmental matters. Key is always do you have the money.

9. Pressure for combining DNR and DOE or at least providing for a one stop permit agency or council. The danger is that when you put the antagonists together that one will completely dominate the other. Especially true where one is well established and heavily backed by private interest groups.
10. Utilities are especially interested in setting up a single super agency that could override stringent regulations of any particular agency.

Rodger's feels that major conflicts or policy decisions ought to be resolved at the legislative level.

11. Power Plant Siting Council is composed of 15 agencies that respond only to actual sites presented to them. These have no independent planning capabilities. Rodgers would like to see an independent council that retains independent consultants to do siting research, vs. just responding to sites presented by the utilities. Also sees the utilities providing the money for planning.
12. Feels that DOE is doing a better job than the previous agencies did individually. Still early to say too much.

INTERVIEW REPORT

DATE: July 25, 1972

INTERVIEWERS: Victor Arnold, Fred Neal, Harold Sheff, Kent Larson

NAME: Frank Bestor
TITLE: Director, Human Affairs Council
ADDRESS: 237 House Office Building
Olympia, Washington
TELEPHONE: 206 - 953-3070

FUNCTION: Coordination of the Human Affairs Council -- keeping government in touch with human interest groups.

SUMMARY:

1. Regions in Washington:

- 13 exist and are used as planning base
- but: local governments and public react in opposition to regional planning, especially to placement of regions.
- economic and geographic considerations used in outlining regions-very comprehensive basis.
- no close work with local governments - probably can't be done.

2. Human Affairs Council:

- citizen advisory group; in existence only 4 months.
- established by executive decree
- funded: by governor's office (discretionary) and federal planning sources.

3. Cabinet:

- 20 agency directors, 2 staff (Administrative Assistant and legal advisor), and governor as chairman.
- issues: 1) Indian Affairs desk idea (gets Indian inputs), 2) Indian opposition to industrial use of water found on Indian lands.
- cabinet not really used much because other informal methods, which are better established, are used for policy planning.
- no real knowledge of impact on various groups; it is expected that the council can bring such inputs . . . allow minority group inputs in decision making process.

4. Zero Growth:

- basically: population
- yet; some environmentalists seek zero economic growth, which is presently unfeasible: 9% unemployment (down from 13%).

5. Washington 2000 project: Tom Sine

- alternative growth and development
- trying to get citizen input: where do we want to go?
- based on Hawaii and Connecticut 2000 projects.

6. Recommendations:

- organize way to respond so that policy issues are channeled to single body--more along functional lines with good opportunities for citizen participation.

INTERVIEW REPORT

DATE: July 25, 1972

INTERVIEWER: Fred Neal, Victor Arnold

NAME: George Hansen

TITLE: Head of Comprehensive Planning Division of the Washington
State Department of Ecology

ADDRESS: Department of Ecology
St. Martin's College
Olympia, Washington 98501

FUNCTION:

Hansen's Division functions as the area where the program activities of the Department of Ecology (DOE), i.e., Air Resources, Water Resources, and Land Resources, can come together to understand each other's concerns, thus helping to create the "truly integrated" environmental agency desired by the 1969 Legislature. Comprehensive Environment Planning is currently responsible for developing a review procedure for Environmental Impact Statements required of all state agencies by Washington's new Environmental Quality Act. Neither DOE or any other state agency has the power to suspend an agency's actions if such are deemed environmentally unfit, however, DOE can levy administrative fines. Also, where it has ascertained measurable damage to the environment it can collect damage fines from the guilty party to be used to restore the resources involved. Hansen feels that DOE would never appeal an unfavorable decision by the Pollution Control Hearings Board to the courts.

SUMMARY:

Authority for Air Pollution Control in Washington rests with regional, multi-county agencies with no direct relationship with DOE except that the State has pre-empted jurisdiction over several specific industries: smelters, pulp and paper mills, oil refineries.

RECOMMENDED FOLLOW UP:

DOE seems to be preparing to take over and administer any statewide level land use plan adopted by the State, adding Land Resources to its present preview of air and water resources. It is not entirely clear yet, however, that DOE will have that responsibility. What efforts will DOE make to assure an increased land use regulatory role?

INTERVIEW REPORT

DATE: July 25, 1972

INTERVIEWERS: Harold Sheff, Fred Neal, Kent Larson

NAME: Arden Olson

TITLE: Land Planner

ADDRESS: c/o Department of Natural Resources
Olympia, Washington

FUNCTION: Works for DNR's Public Lands Division. Olson works closely with Department of Ecology (DOE) on shoreline management and environmental impacts.

SUMMARY:

1. Role of DNR:

- role changed with creation of DOE in 1970.
- now: basically, DNR responsible for land resource management:
timber: 3 million acres; tideland: 1 million acres.
- utilization of resources requires proper management and maintenance.
- DOE has overlap of functions; DNR subject to rules and regulations of DOE, although rules must meet federal requirements.
- always has been Army Corps of Engineers permit procedures. Used to be looser relationship with various state agencies, whereas DOE now coordinates all state interface with ACE. DOE acts as intermediary, and gathers individual agency responses to form one coordinated response to ACE proposals.

2. DNR - DOE relations:

- DNR feels lumber is responsibility of DNR - has built up expertise lacked by DOE.
- Shoreland management -- guidelines set up by DOE, but conflict with DNR's logging practices.
- Olson sees good cooperation existing, although minor differences.

3. New Environmental Policy Act

- requires impact statements, but not clear who writes them, what is necessary information, etc.
- impact statements are subjective -- depend heavily on who's writing them.

4. Organizational Superstructure

- Board of Natural Resources does most of decision making; all departmental activities go through here for review and approval.
- Commissioner of Public Lands (Bert Cole)
this is elective position; commissioner is political figure and public relations man. (Little would change if post was not elective, says Olson)

5. Citizen input:

- DNR not open and aggressive about programs with public impact.
- opinion: not really responsive to public needs
- Board meetings open, but not publicized.
- some lobbying done by lumbering concerns, etc.

6. Finances

- DNR budget: 90% from operation of state lands, very little from general fund of state.
- Constitution of State specifies that state lands should be used to maximize funds for state school facilities. A member of the Board of Natural Resources is Superintendent of Public Instruction (elected) who wants to maximize profits for school funds.
- money comes from harvested timber and leases.
- no land acquisition program - merely land exchange with federal government and private industry.

7. Planning and Community Affairs Agency:

- gets federal 701 dollars for local planning programs.

COMMENTS:

Olson is both involved with planning and land use. He was a member of the State Planning Division of Washington's Office of Program Planning and Fiscal Management.

INTERVIEW REPORT

DATE: July 26, 1972

INTERVIEWERS: Victor Arnold, Fred Neal, Kent Larson

NAME: Ludlow Kramer
 TITLE: Secretary of State
 ADDRESS: Olympia, Washington

FUNCTION: Besides Secretary of State duties, Kramer has become a self-appointed human affairs organizer.

SUMMARY:

1. According to Kramer, when he took over in 1965, human concerns were overcome by other lobbies. Since then, Kramer has endeavored to improve human concern programs with a three-stage program.
2. Stage 1: Task forces for Urban Affairs department
 - a. Majority of members from opposite party
 - b. microcosm of society: try to keep the advocacy of extremes.
 - c. total result goes to legislature whether or not liked by Lud, etc; no censorship of ideas as goes through Secretary of State office.
 - d. task forces converted at time of legislative hearings to lobby groups - they follow through to end.
 - such mechanism got 79/101 pieces of legislation passed.
3. Stage 2: Department of Human Affairs
 - basically a failure
 - attempt was to create "melting pot" of all 80 leaders of interests plus cabinet officers -- failure because too fragmented.
4. Stage 3: Batelle Institute Merger
 - get Batelle funding, research effort, and data.
 - state knows problems and "emotional" solutions, but needs Batelle for factual data for decision-base.
5. Washington treats the Indians as sovereign nations.
 - autonomy creates problems, advantages for Indians.
6. Office of Program Planning and Fiscal Management + Slavin's Community Affairs Department operate as planning for state.
7. Washington has desire for selective tourism - get urban spenders such as conventions.

COMMENTS:

Kramer is the dynamic individual . . . streamlined Secretary of State functions to point where he operates on budget lower than that of his predecessor, and manages to spend his own time on human affairs problems.

INTERVIEW REPORT

DATE: July 25, 1972

INTERVIEWER: Kent Larson, Harold Sheff

NAME: Judge Matthew W. Hill

TITLE: Chairman, Pollution Controls Hearing Board

ADDRESS: 312 Insurance Building, Olympia, House

FUNCTION: Chairman of 3 member administration review board that hears all appeals from any action of Washington Department of Ecology, local air pollution control boards.

SUMMARY:

1. Rules or regulations were left to the Board to promulgate. This was done after a survey of the procedure of other administrative boards.
2. Rules can be adopted only after Public Hearings. The final draft is sent to the Reviser of Statutes for certification and codification. (WAC 371-08-005 to 245).

The same procedure must be followed for any amendments to the rules.

3. The Board is not part of Department of Ecology, but was created by the same legislative act. The Board has jurisdiction over any actions of the Department of Ecology. It also has jurisdiction over actions of local air pollution control boards. These local authorities may establish their own regulations, and they have the authority to impose civil penalties which are also appealable to the Hearings Board.
4. Judge Hill feels it should be a "small man's court." Thus, the Board travels from town to town, depending on where a particular problem arises. Attorneys are allowed but are not a necessity. Attorneys are usually present only in the more important cases.
5. The Board is composed of 3 part time members, appointed by the Governor and confirmed by the Senate. The members are paid \$75 per day plus expenses. Any single member may conduct a hearing, however a decision can only be made by two members.
6. Delays have not occurred yet. Most decisions are made within 30 days. The practice has been that parties do not always desire a speedy decision.
7. Hearings may be conducted either formally or informally. The practice has been to conduct informal hearings unless otherwise stipulated by the parties. Informal decisions are appealed de novo to Superior Court, formal decisions are appealed on the record to the Court of Appeals.
8. Actions of the DOE on local air pollution boards must be appealed to the Hearings Board or the appellant would lose the right of appeal.

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STATE OF MINNESOTA

9. So far only 2 cases have been appealed to the Superior Court, and only 3 to the Court of Appeals. The Board has heard 160+ cases to date. The longest lasting 5 days, with the average being 2 days.
10. Funding is done by legislative appropriation, the only staff is a full time clerk secretary. However, the largest single expense is for court reporters, records, etc.
11. The general policy of the Hearings Board "has been to be tough but fair to polluters." The Board has made it a practice to allow individuals to present all the evidence they have, rather than following strict rules of evidence.
12. The Shorelines Management Act provided that the Hearings Board would participate in concert with three other appointees, in a new Shorelines Hearing Board, other members will be the Stateland Commissioner or his designee, and one representative each named by the Associate of County Commissioners and Association of Washington Cities.

The entire Board must be present during a hearing, however, only 4 members are needed to make a decision.

The members of this Board are not paid, and this does result in some hardship to the 3 members from the Pollution Hearings Board.

This Board has heard 58 cases to date.

13. The Judge expects that the role of the Hearings Board will be expanded in the future to that of an "Environmental Hearings Board," with jurisdiction over any state agency decision leaving an environmental impact.

RECOMMENDED FOLLOW UP:

It is expected that the Board could provide a prototype for a similar mechanism in the State of Minnesota.

INTERVIEW REPORT

DATE: July 26, 1972

INTERVIEWER: Victor Arnold, Kent Larson, Harold Sheff, Fred Neal

NAME: Ronald McConnell, Director
John L. Robertson, Assistant Director

ADDRESS: Washington State Land Planning Commission
545 108 Avenue N.E.
Bellevue, Washington 98004

TELEPHONE: 206 - 454-6106

FUNCTION: Heads the temporary legislative commission evaluating land use planning in the State of Washington.

SUMMARY:

1. Although the Commission is officially charged only with evaluating land use policies in Washington, the staff expects to examine issues relative to comprehensive environmental planning.
2. Environmental consciousness on the part of the electorate was felt to be higher in Washington than in other states. This fact coupled with fast economic growth rates and violent shifts in the conomy, especially in urban areas, was seen as the reason for more environmental legislation, i.e. Boeing-1969 employed 105,000; 1972, employed 35,000 in the urban areas of Washington.
3. Unclear at this time whether the solutions enacted are adequate. The Department of Ecology is an unknown, there are doubts whether it will be anything more than the sum of the agencies used in creating it.
4. Washington at the present time has a hotch potch of Departments, Commissions, Boards, etc., that answer to no one. As a result contradictory policies abound. Interagency conflict is tremendous in Washington. Felt that the state bureaucracy needed a shakeup, fat cutting.
5. Washington is a home rule charter state. People tend to be somewhat provincial. No longer is the issue local v. regional controls, shifted to regional v. state or federal domination. Commission is looking into regional government. Present thinking is not a new layer, but rather a layer that takes existing powers both from the top and the bottom.
6. "Utah process" - Craig Begler, Gary Jones, Governor's Office State of Utah - process where any policy decision with statewide impact is made by all departments and the Governor and his aides - office of policy coordination.
7. Washington does not have a state income tax.

8. At the present time a single "purpose" approach to problems exists at the state level. Thus each program is handled by a single agency, without any integration among problems or agencies, "funnel concept."
9. It was felt that the Governor ought to have a short term planning budget, with long term planning being funded by the legislature. A suggestion was the creation of planning chairs for distinguished experts in various fields, either industry or academia. These would last for 1 or 2 years, constantly providing a source of creative energy. However it would be essential that some sort of feedback would exist between this group and the legislature.

COMMENTS:

At the present time the Commission has been in existence with a full staff for only 5 months. As a result many of their programs are still in the formative stages.

RECOMMENDED FOLLOW UP:

Check into the "Utah Process," possible development of "planning chairs."

INTERVIEW REPORT

DATE: August 24, 1972

INTERVIEWER: Kent Larson (373-7574)

NAME: Richard M. Beebe
TITLE: Industrial Development
ADDRESS: Department of Commerce and Economic Development
Olympia, Washington
TELEPHONE: 206 - 753-5614

FUNCTION: Industrial siting counsel and liaison with state agencies.

SUMMARY:

1. General Industrial Development policies vis a vis the environment:

- works closely with DOE in industrial siting. All prospective newcomers receive DOE environmental regulations and standards in any promotional literature, etc.
- basic push is for original design of industrial equipment to be good, rather than modifications, (this has been a continuing policy).
- work with regional planners to get all possible information for state and industrial siting decisions.

2. Geographic Promotion?

- the state does not attempt to encourage industry in underdeveloped regions, rather DCED looks to maximize industrial profits.
- the policy has been that the state can't really influence placement-economics is the sole determinant.

3. Attitude toward tourists:

- the state likes to encourage tourists, but likes to address its promotion to the "silk stocking" trade--can't advertise to all, so might as well be selective.
- likes idea of charging tourists more to control development through working with developers.

4. Major employers

- Boeing, Lockheed
- Weyerhaeuser, St. Regis, Simpson, International Paper
- Pacific Car and Foundry and other shipbuilding industry.

COMMENTS: Sending literature

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CHAPTER XNEW YORKINTRODUCTION

New York was selected as the subject of an intensive investigation as a result of its recent experiences with environmental reorganization--its creation of a Department of Environmental Conservation. Although other states have already undergone or are undergoing similar reorganization efforts, as the structure for an environmental department in Minnesota was designed utilizing certain goals and objectives, the similarity between Minnesota's proposed structure and New York's implemented structure was obvious. Prior to its environmental reorganization, New York had two powerful, autonomous agencies, one dealing with environmental management and the other with regulation, both had large constituencies and well-established programs. In addition, little communication or coordination existed between the two; consequently, environmental efforts were divided and inefficient. Similarly, Minnesota has a Department of Natural Resources and a Pollution Control Agency; one dealing with conservation, the other with pollution abatement as if the two realms were not interrelated. Perhaps Minnesota will be able to learn from both the negative and positive experiences of New York's approach to the growing need for responsible environmental management.

GEOGRAPHIC AND POPULATION FACTORS

Geographic Features

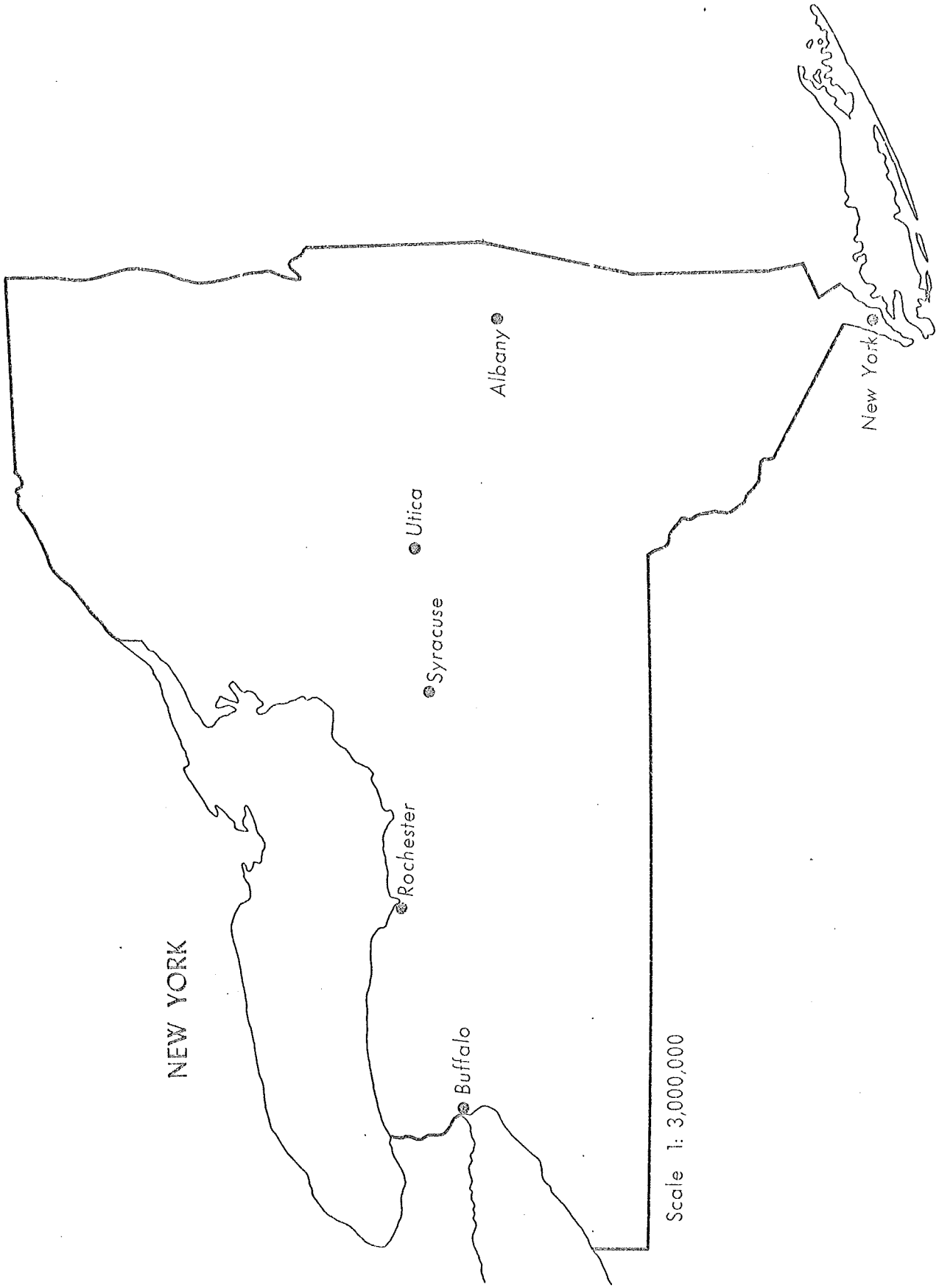
New York State is located in the northeast region of the United States.* The state has a triangular outline, with a breadth from east to west of 332 miles and from north to south, on line of the Hudson River, of 312 miles. In addition, Long Island thrusts about 118 miles eastward from New York Bay.

New York is bounded on the north by Lake Ontario, the St. Lawrence River and Canada; on the east by Vermont, Massachusetts, and Connecticut; on the south by the Atlantic Ocean, New Jersey and Pennsylvania; and on the west by Pennsylvania, Lake Erie and the Niagara River. (See map on following page.)

The most notable topographical feature of the state is the circular Adirondack Mountain area in the northeast whose peaks range from 2,000 to 5,000 feet. The Adirondack forest provides one of two "forever wild" regions in the state; the other being located in the Catskill Mountains. Together the two areas compose roughly 2.5 million acres.

South of the Mohawk River and west of the Hudson River rises a high level plateau which extends westward to the Pennsylvania border. This plateau contains more than 1/2 of the total area of the state and is cut by numerous streams which have created deep valleys. In the southeastern section of New York near the Appalachians, the plateau becomes much higher, reaching its culmination in the Catskills. Like the Adirondacks, this region is largely forest-covered and is a famous summer and winter sports site. South of the Catskills is a lowland and a highland region. The lowlands are a continuation of the Great Valley of the Appalachians and extend into Vermont, New Jersey and Pennsylvania.

*New York ranks 30th among the states in land area (47,000 square miles).



NEW YORK

Rochester

Syracuse

Utica

Buffalo

Albany

New York

Scale 1: 3,000,000

Of the total 47,000 square miles, 10,000 square miles are in active agricultural land, 18,000 to 20,000 square miles are woodland and 12,000 to 14,000 square miles are brushland, wetlands or lands reverting back to forest.

Water area in the form of lakes account for about 3.5 million acres while there are over 70,000 miles of streams. Thus, about 95 percent of the land is presently in nonurban uses.

Due to its topography and location between the Atlantic Ocean and the Great Lakes, New York has a wide variety of climate. The mean annual temperature in the state is about 45° F, although temperature means vary from 54° F in New York City to about 40° F in the Adirondacks. The mountain and plateau regions have heavy snowfalls and extreme changes in temperature, while the rest of the state has light snowfalls and fairly constant temperatures.

Population

New York had a population in 1970 of 18.2 million*; an increase of 8.7% over the 1960 figure of 16.8 million. New York's population is concentrated in seven major urban areas; New York City, Buffalo, Rochester, Syracuse, Utica-Rome, Albany-Troy-Schneectady, and Binghamton. (See map.) In fact, only 2.4 million people live outside of these regions. Thus, 90% of the population is located on only 5 percent of the land.

*Ranks second only to California.

Population is expected to increase by approximately 200,000 people per year. This increase is expected to continue until 1980 and then to slow gradually. Thus, by 1980 a population of 20.2 million or an 11 percent increase from 1970 is expected.

Growth is expected to be concentrated in the low density areas surrounding the seven major metropolitan areas. Of the two million projected increase for 1980, approximately one and a half million is expected to occur in suburban areas. Central cities and rural areas are expected to experience declining growth rates from their present levels.

Geographically, the strongest patterns are expected to occur in two large regions; metropolitan New York and the upstate metropolitan corridor. New York City is expected to remain stable in population while its suburban regions are expected to grow at about 25 percent. The metropolitan corridor which stretches from New York City up the Hudson River to the Albany-Troy-Schnectady area is expected to grow at about 20 percent. The rest of the state is expected to grow at rates below the state average.

Population characteristics are also changing. Population is increasing in the age groups below 30 while it is remaining constant or declining in those groups above 30. The non-white population is increasing but not at a significantly greater rate than the white population.

Population increases are viewed as creating three interrelated problems for the environment. First, increases will affect the demand on natural resources. As the population increases and as leisure time and disposable income increase, people will demand more products and utilize more of the out-of-doors. Second, the disposal, recycling and possible environmentally damaging effects associated with a highly technical society are enormous.

NEW YORK

The State
Size of Place
Standard Metropolitan
Statistical Areas
Urbanized Areas
Places of 2,500 or More
Counties

	Population										Households			Population in group quarters		
	All persons							Persons 14 years and over— Percent married		Persons 18 years and over— Percent male	Number	Percent change 1960-70	Persons per household	Number	Percent of total	
	Number	Percent change 1960-70	Percent Negro and other races	Percent under 18 years	Percent 18 to 64 years	Percent 65 years and over	Fertility ratio ¹	Male	Female							
The State	10 226 967	8.7	12.2	32.0	57.2	10.8	336	64.7	58.7	46.3	5 913 661	12.7	3.01	461 731	2.5	
SIZE OF PLACE																
Urban	15 602 486	8.9	15.1	31.1	57.9	11.0	325	64.3	57.7	45.9	5 159 757	12.8	2.95	383 392	2.5	
Urbanized areas	14 267 804	10.4	16.1	31.0	58.1	10.8	323	64.4	57.9	45.9	4 739 520	14.2	2.95	300 677	2.1	
Central cities	9 311 018	-0.5	22.0	28.5	59.2	12.2	319	62.3	55.4	45.4	3 320 780	5.2	2.75	189 032	2.0	
Urban fringe	4 956 786	29.2	5.0	35.7	56.1	8.2	332	68.6	62.8	46.9	1 418 740	42.9	3.42	111 645	2.2	
Other urban	1 334 682	-5.6	3.9	31.7	56.0	12.3	342	62.7	55.5	46.0	420 237	-1.4	2.98	82 715	6.2	
Places of 10,000 or more	681 937	-10.7	5.1	30.1	56.5	13.4	327	60.9	52.6	45.2	220 518	-5.6	2.85	46 800	6.9	
Places of 2,500 to 10,000	652 745	0.5	2.7	33.4	55.4	11.2	359	64.7	58.8	46.8	199 719	3.7	3.09	35 915	5.8	
Rural	2 634 481	7.5	2.0	37.6	52.9	9.5	405	67.5	65.9	49.0	754 104	12.1	3.39	76 339	3.0	
Places of 1,000 to 2,500	367 645	18.9	1.8	35.3	53.0	11.7	380	69.3	62.1	46.6	114 428	20.0	3.14	7 806	2.1	
Other rural	2 266 836	5.9	2.0	37.9	52.9	9.2	409	67.2	66.6	49.5	639 676	10.8	3.43	70 533	3.1	
STANDARD CONSOLIDATED AREA																
New York-Northeastern New Jersey	16 178 700	(NA)	16.3	31.2	58.3	10.5	321	65.2	58.8	46.0	5 319 915	(NA)	2.99	285 670	1.8	
STANDARD METROPOLITAN STATISTICAL AREAS																
Albany-Schenectady-Troy	721 910	9.8	3.7	32.8	56.0	11.2	353	65.4	58.6	46.4	230 484	13.2	3.04	22 319	3.1	
Binghamton, N.Y.-Pa.	302 672	6.7	1.2	35.1	54.6	10.3	376	67.9	62.3	47.0	93 290	11.7	3.17	7 242	2.4	
Buffalo	1 349 211	3.2	8.8	34.4	55.6	10.0	349	65.7	59.2	46.5	418 255	8.2	3.16	26 704	2.0	
New York	11 571 899	8.2	18.0	30.7	58.5	10.9	318	64.4	58.0	45.8	3 876 503	12.3	2.93	217 308	1.9	
Rochester	882 667	20.5	7.0	34.6	55.7	9.7	377	66.7	60.9	46.9	270 515	23.4	3.16	28 142	3.2	
Syracuse	636 507	12.9	4.4	35.4	55.2	9.3	377	64.3	59.8	47.3	192 242	17.5	3.19	22 970	3.6	
Utica-Rome	340 670	3.0	2.5	34.3	54.5	11.3	383	64.1	59.7	47.3	103 486	7.7	3.15	14 776	4.3	
URBANIZED AREAS																
Albany-Schenectady-Troy	486 525	6.8	5.0	30.6	57.0	12.4	330	63.2	55.9	45.9	161 323	10.6	2.90	18 620	3.2	
Binghamton	167 224	5.7	1.7	31.9	56.6	11.5	341	66.5	58.9	46.0	54 104	10.8	2.98	6 162	3.7	
Buffalo	1 086 594	3.1	10.4	33.5	56.2	10.2	341	65.0	57.9	46.0	343 809	8.5	3.10	21 227	2.0	
New York-Northeastern New Jersey	16 206 841	14.8	16.4	31.2	58.3	10.5	321	65.1	58.8	46.0	5 332 669	18.4	2.99	287 759	1.8	
Rochester	601 361	21.9	9.1	33.3	56.3	10.3	372	66.5	59.8	46.4	190 883	25.0	3.07	15 916	2.6	
Syracuse	376 169	12.9	6.8	33.6	56.6	9.8	354	63.5	57.5	46.4	118 417	18.5	3.06	14 050	3.7	
Utica-Rome	180 355	-4.0	4.3	32.0	55.7	12.3	362	61.9	56.5	46.7	56 053	0.5	3.00	11 967	6.6	

And finally, there will be many problems associated with the difficulties of fulfilling human needs from a limited resource base. Unfortunately, no solutions are on the horizon for New York in its attempt to face these problems.

Political Factors

The governor of New York is a strong executive whose prominent position often makes him a presidential possibility. He is elected for a four-year term along with a lieutenant governor, comptroller, and attorney general. Among the governor's duties and powers are construction of the budget, the appointment and removal of many officials, law enforcement, and approval or veto of legislation and command of the state militia and police. The governor oversees the Executive Department composed of divisions corresponding to his various powers and duties. He also has a large personal staff at his disposal.

The present governor is Nelson Rockefeller, a Republican who has served as Governor since 1958. His present term will expire in 1974. As a result of this long service and his personal and business connections, Governor Rockefeller occupies a position of considerable power. Thus, it comes as no surprise that he was able to engineer the creation of the Department of Environmental Conservation in 1970 without outside support.

The New York Legislature is elected biennially. Each member of the Senate or the Assembly represent a single district; of which there are 57 Senate Districts and 150 Assembly Districts. At the present time Republicans hold a majority in both Houses, although registered Democrats outnumbered Republicans 3.6 million to 3.1 million out of a total of 7.6 million voters.

The Legislature meets yearly. Most of its work is done by committees, whose chairmen have great leeway in determining what bills will receive approval.

It was stated by those interviewed that to date the government has shown a general lack of environmental awareness. However, it was felt that this situation was changing, that as the public exhibited strong support for the environment, legislators, the Executive Department and state agencies would follow suit.

The state is financed through the general fund which is divided into two subsidiary funds: the local assistance fund from which appropriations are made in support of units of local government and the state purposes fund from which appropriations are made for the operation of state departments and for debt service. The state's capital construction is provided for through the capital construction fund.

The constitution requires that on or before February 1 of each year the governor shall submit a budget to the Legislature. The budget contains a complete plan of expenditures for the next fiscal year and the year's estimated revenues. State expenditures and revenues have been steadily rising since the end of World War II. The budget for 1970 was about 7.257 million, over half of which is returned to localities principally for educational purposes. Traditionally, the largest expenditures at the state level have been highways, health and mental hygiene, and social welfare.

ECONOMIC FACTORS

New York residents have one of the highest standards of living in the world. Personal income is predicted to be up to 125 billion dollars per year by the end of this decade. At the same time it is predicted that over half of households will have incomes over \$15,000 per year. However, 15% of the population will still have incomes below \$4,000 per year. Per capita income stands at about \$4,000.

The labor force is expected to reach 9.2 million by 1980 from its present level of about 8.1 million. Unemployment figures are running from 4 percent to as high as 7 percent, which can mean in absolute terms anywhere from 1/4 million to 3/4 million of the population is unemployed.

The gross state product is predicted to increase by 50% in the next twenty years and is presently surpassed only by California in absolute terms.

In many ways New York's economy is reflective of the economy of the nation as a whole. Good soil, excellent transportation facilities and nearby markets have kept New York an important agricultural state. Most farming is done on large commercial farms. Presently, about 13,000,000 acres are being farmed by about 66,000 farms. The average farm in 1965 was nearly twice the size of a 1900 farm, but investment per farm had increased about ten times as had production.

Dairying is by far the most important source of farm income; it provides about half of this total. Other important sources of farm income are poultry and eggs, livestock products, fruit, vegetables and field crops.

Manufacturing is located in seven metropolitan areas. New York City is the largest and best known. However, Buffalo, Rochester, Albany-Troy-

Schneectady, Syracuse, Utica-Rome, and Binghamton all account for significant contributions to the industrial development of New York.

Commerce and finance are also keystones to New York's economy. New York City is the world's financial center because of its stock exchanges, banks, and other financial institutions. A large percentage of all commercial business being transacted daily in the United States takes place in New York City. Many of the countries largest corporations have their headquarters there.

Economists forecast a shift in the economy of New York will occur in the next twenties towards service industries and highly technical industries. In fact it is predicted that service industries will replace manufacturing and trade as the single largest employer of state manpower.

POLITICAL HISTORY & RATIONALE BEHIND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The primary motivating force behind New York State's environmental reorganization seemed to be the realization that pollution sources, problems and control techniques are interrelated. It appears to have been agreed that a single institution would allow a more comprehensive program outlook and streamlined administrative approach to environmental problems. To a secondary degree the following circumstances prompted reorganization:

- (1) The year 1970 was a politically favorable time for environmental reorganization efforts--everyone agreed on the importance, if not the extent, of pollution problems.
- (2) New York's Conservation Department was too clientele-oriented and attention had to be refocused on overall resource problems rather than on the interests of game and fish clubs. In addition, the Department's various divisions were quite autonomous, and reorganization was viewed as one method of bringing these parts together. For example, within the Conservation Department, both the Division of Fish and Wildlife and the Division of Lands and Forests required the same supplies and used the same storehouses but ordered and stored everything separately.
- (3) Pollution programs had gotten a strong start in the Department of Health; however, with the increasing size and number of pollution problems, the Department was forced to channel the bulk of its manpower and resources into pollution control activities, especially into sewage treatment facilities. As a result, not enough attention was being given to the delivery of health services and personal health problems. It was also realized that pollution problems are broader than health issues.
- (4) Overlap of responsibilities and the need to maximize manpower and monetary expenditures helped to motivate reorganization efforts. For instance, an overlap of water responsibilities existed between the Conservation Department and the Health Department -- both departments frequently conducted research in identical areas, such as thermal pollution, pesticides, and fish life.

According to James Biggane, executive deputy commissioner for the Department of Environmental Conservation (DEC), the rationale behind reorganization was a combination of environmental and efficiency concerns plus the desire to stimulate increased public support and awareness of environmental issues.¹

Just as reorganization was a legislative product in some states and the result of a special task force in others, New York's reorganization was mainly a product of the Governor's office. The idea was first conceived there in 1967; then the bill was drafted and the strategy and timing decided upon there before it was presented to the legislature in 1969. This activity was never visible to the public for there were no task forces or public documents. The Governor made all the final decisions. All disputes among state government officials were handled internally.

The only outside opposition encountered was from the Conservation Council, a statewide federation of fish and game, hunting, boating, and other sportmen's clubs, who feared loss of power over the Conservation Department's programs. Although local health units had become powerful, they offered no public opposition to reorganization. In fact, Biggane feels that an even stronger reorganization bill could be passed today because of the legislature's confidence in the concept.

After passage of the new law and prior to July 1, 1970, a special Task Force headed by Commissioner-designate Henry L. Diamond and staffed primarily by members of the Organization and Management Unit of the Division of the Budget and key people in Health and Conservation developed an organizational plan for the new Department; for it was only after the creation of DEC that actual organizational issues emerged. This Task Force had only three months to design an organization. Since it was an election year, no one wished to risk a lapse in services presently provided. The U.S. Forest Service, familiar with the problems of regionalism and administration, was an advisor during this process.

SOURCE AND SCOPE OF AUTHORITY

New York's Department of Environmental Conservation was proposed by Governor Rockefeller in a Special Message to the legislature on March 16, 1970. The bill creating the new department, Chap. 647, Laws 1911: last amended by Chap. 140 L. 1970, was signed into law on Earth Day, April 22, 1970 and operations began on July 1 the same year. (See Appendix for law).

The Act creating the new agency was primarily a reorganization statute transferring specific authorities from existing departments and boards; however, it also established new powers for DEC. The new agency was given major responsibility for developing a comprehensive program to control the quality of the State's environment and to manage effectively the State's natural resources. The legislation integrated for the first time in one department major programs aimed at conserving, enhancing and rehabilitating the environment. These included the air and water pollution and solid waste control programs formerly in the Health Department; the natural resource protection and development programs (including water resources, forest, fish and wildlife, marine and mineral management programs) of the Conservation Department and the Water Resources Commission; the pesticide control program of the Department of Agriculture and Markets; and the natural beautification function of the Office for Local Government.

The former Conservation Department, the Water Resources Commission, the Air Pollution Control Board and the Natural Beauty Commission were terminated by the new law.

The department administers the Environmental Conservation Law by:

Carrying out the environmental policy of the State;

Preparing an environmental plan for the future that establishes

clear priorities;

Providing for the prevention and abatement of water, air and land pollution, including but not limited to that related to noise, particulates, gases, dust and aerosols, vapors, radiation, odor, nutrients and heated liquids;

Encouraging the recycling and reuse of products to conserve resources and reduce waste products;

Encouraging the disposal of solid wastes, including domestic and industrial refuse, junk cars, litter, and debris consistent with sound health, scenic, environmental quality and land-use practices;

Undertaking scientific investigation and research on the ecological process and pollution prevention and abatement;

Monitoring environmental conditions;

Assuring the preservation and enhancement of natural beauty and man-made scenic qualities;

Initiating an extensive public information program to inform the public of environmental conservation principles and enlist help programs;

Accepting responsibility for management, care, custody and control of the forest preserve and recreation facilities therein under the same institution and statutory policies now in existence;

Administering the fish and wildlife laws, operating fish hatcheries and wildlife management and research.²

Generally, these are the overall goals for the department which carve out its environmental jurisdiction.

The Division of Parks, formerly the largest division in the Conservation Department, was not transferred to DEC for political reasons -- its great power and autonomy, strong clientele and its legislative base. The temporary location of the Parks Division, renamed the Office of Parks and Recreation, is in the Executive Department where it is virtually independent. However, this independence is not feared; the new director of Parks and Recreation is the Governor's cousin. Biggane predicts that the Office of Parks and Recreation will eventually be moved back to DEC.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S ORGANIZATION

Perhaps the best method by which to explain and analyze DEC's organizational structure is to examine it from a planning perspective. If this perspective is utilized, DEC can be divided into five sections: The Commissioner and his aides, Environmental Advisors, line functions, program staff functions, and regional operations. In this scheme, ideally, the Commissioner is directly responsible for state environmental affairs; environmental advisors consult with the governor on comprehensive environmental policy matters; the line functions provide administrative support and long-range planning capabilities; the program staff provide short-range projects and objectives; and regional operations implement and administer the program plans. (See following page for DEC Organizational Chart).

Budget

Before each of these areas is individually discussed, DEC's overall budget should be noted.

DEC's budget for fiscal year 1972 was \$39.6 million, not including \$1.4 million in federal funds, as opposed to the \$43.7 million requested by the Governor. The administrative and staff units under the Commissioner account for \$5.8 million of this total. Program staff operations account for approximately \$34 million of the total budget. The Governor requested a budget of \$44 million for fiscal year 1973; it is speculated that \$42 million will be appropriated.³

Council of Environmental Advisors

The Council of Environmental Advisors, created by the new law, is a seven-member group "who shall be private citizens, representative of a broad range of interests and disciplines related to the quality of our environment



OCTOBER 2, 1972

SPECIAL ASSIGNMENTS
Deputy Commissioner L. Hope

**COMMISSIONER OF
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**
Henry L. Diamond

EXECUTIVE DEPUTY COMMISSIONER — James L. Biggane
FIRST DEPUTY COMMISSIONER — Ronald W. Pedersen

CHAIRMAN:

- ENVIRONMENTAL FACILITIES CORPORATION
- STATE ENVIRONMENTAL BOARD - Ex. Sec. - I. King
- STATE NATURAL & HISTORIC PRESERVE TRUST
- NATURAL HERITAGE TRUST

ADMINISTRATION
Director J. Allen

MANAGEMENT SERVICES T. Zuk	FISCAL MANAGEMENT W. O'Brien Asst. P. Hogan
PERSONNEL F. DuCharme	AVIATION H. Evans

PLANNING & RESEARCH
Director (Vacant)

PLANNING F. Howell	RESEARCH COORDINATION (Vacant)
ENVIRONMENTAL ANALYSIS T. Curran	

OFFICE OF GENERAL COUNSEL
General Counsel F. Wallace

LEGAL SERVICES C. LaBelle A. Grannis	LAW ENFORCEMENT W. Goodman
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COMMUNICATIONS & EDUCATION
Director R. McManus

PUBLIC INFORMATION A. Woldt	EDUCATIONAL SERVICES H. Bodinson
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COMMUNITY ASSISTANCE C. Morrison, Jr.	EDUCATION J. Passer
AUDIO-VISUAL SERVICES R. Rehbaum	PUBLICATIONS R. Hall

ENVIRONMENTAL QUALITY
Deputy Commissioner D. Metzler

FIELD SERVICES
Deputy Commissioner E. S. Legg
Director V. Glider

ENVIRONMENTAL MANAGEMENT
Deputy Commissioner W. M. Lawrence

PURE WATERS Director E. Seebald Assoc. Dir. (Vacant)	AIR RESOURCES Director A. Rihm Assoc. Dir. H. Hovey	QUALITY SERVICES Director W. Bentley
CONSTRUCTION GRANTS E. Trad	TECHNICAL SERVICES G. Blanchard	SOLID WASTES W. Wilkie
WATER QUALITY MANAGEMENT D. Stevens	AIR QUALITY SURVEILLANCE P. Berry	RADIOLOGICAL POLLUTION T. Cashman
MUNICIPAL WASTES F. Bogedain	SOURCE CONTROL S. Marlow	NOISE CONTROL F. Haag
INDUSTRIAL WASTES S. Pagano	ABATEMENT PLANNING E. Davis	PESTICIDE CONTROL C. Frommer
		RECOVERY, RECYCLING AND REUSE S. Mathur

FISH & WILDLIFE Director A. Hall Asst. Dir. K. Wich	LANDS & FORESTS Director J. Preston Asst. Dir. H. Decker	MARINE & COASTAL RESOURCES Director A. Jensen (Acting)	RESOURCE MANAGEMENT SERVICES Director R. Cook	WATER MANAGEMENT PLANNING Director J. Finck (Acting)
FISH C. Parker	FOREST RECREATION R. Norton	ENVIRONMENTAL CONTROL R. MacMillan	GENERAL ENGINEERING L. Concra	
WILDLIFE H. Doig	STATE & PRIVATE FORESTRY R. Smith	MANAGEMENT & DEVELOPMENT W. Miller	WATER MANAGEMENT E. Rich	
ECOLOGICAL STANDARDS (Vacant)	FOREST INSECT & DISEASE CONTROL E. Terrell	MARINE RESEARCH J. Poole	WATER REGULATION E. Vopelak	
	FOREST FIRE CONTROL C. Boone		MINERAL RESOURCES J. Dragonetti	
			REAL PROPERTY H. Gannon	

REGION 1 Director D. Perriman (Acting)	REGION 2 Assistant Commissioner G. Humphreys	REGION 3 Director W. McKeon	REGION 4 Director A. Baskous	REGION 5 Director W. Petty	REGION 6 Director J. Wilson	REGION 7 Director W. Hicks	REGION 8 Director R. Perry	REGION 9 Director H. D. Bossert
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and responsive to the full range of needs and concerns of our present and future generations."⁴ The members are appointed by the Governor with the advice and consent of the Senate. Their role is to advise the Governor on comprehensive environmental policy matters, trends and programs, recommend legislation, and aid in developing "guidelines for weighing the complex interrelationships between environmental quality, economic development and the growing population associated with economic growth."⁵ The Council can conduct investigations, hold hearings, and subpoena witnesses.

Commissioner and Aides

The Commissioner is totally responsible for the organization and administration of DEC. He reports monthly to the Governor on the status of the infant department.

The Commissioner's term continues through the duration of the Governor's term until a successor has been appointed and qualifies. Salary - \$40,075.

The importance of strong leadership during the reorganization process was emphasized by DEC personnel. Unless there is strength at the top of the organization, infighting at the bottom will destroy the structure. It takes power to hold previously autonomous divisions together.

The Commissioner has a Deputy Commissioner for Special Assignments, an Executive Deputy Commissioner, and a First Deputy Commissioner to advise him. The Deputy Commissioner for Special Assignments is actually a legislative liaison (this position was created for political reasons and it was recommended that Minnesota not follow this example). The Executive Deputy Commissioner is the Commissioner's first assistant in charge of the various deputy directors in the main office; as such, he administrates DEC in the Commissioner's absence.

On the other hand, the First Deputy Commissioner is the second assistant to the Commissioner in charge of planning and the drafting of a statewide environmental plan.

Line Functions

Line functions consist of Administration, Planning and Research, Office of General Counsel, and Communications and Education. Throughout the reorganization process the development of these functions has been a low priority.

A. Planning and Research has suffered the most during reorganization. It is envisioned that this unit will have the capacity for comprehensive environmental long-range planning and will serve as a central clearinghouse for planning at the divisional as well as at the regional level. Unfortunately, DEC has staff familiar with all aspects of pollution problems; but few have ever engaged in broad pollution abatement planning. At present, there are two persons in P and R from a recently-created resource planning unit in the former Conservation Department, until a planning director is appointed, they will report to Ron Pedersen, first deputy commissioner. As part of an integration scheme, the planning unit of the Water Resources Division in Environmental Management will be elevated to the central planning unit. At this time, the only planning being accomplished is by Water Resources. Due to these factors both planning and research efforts are scattered and uncoordinated.

This office is also charged with the formulation of a statewide environmental plan -- a dynamic plan containing individual regional plans developed within overall goals. As of November, 1972, a Pre-hearing Draft of this plan had been finished under the direction of Ron Pedersen. This draft appears to be a general policy document consisting of guidelines, not details.

For a discussion of the duties of the Office of Environmental Analysis see the sub-section entitled Impact Statements.

B. Communications and Education, inherited from the old Conservation Department, is primarily education-oriented. It operates four education centers which are available to the general public and endeavor to be interpretative. Community Assistance was created to coordinate and assist Community Management Councils. By statute, towns, villages, cities, and counties may establish these councils to advise the DEC; in this way both the Department's perspective is widened and citizens' understanding of DEC's goals is promoted. Due to the fact that it has not been able to develop a capacity of its own, Community Assistance has not met expectations.

Program Functions

Program functions include Environmental Quality and Environmental Management. The Deputy Commissioners for Environmental Management and Quality have the authority and responsibility to develop program-related matters and to assure adherence of the field staff to program plans and technical standards.

At the moment, both divisions are much larger than is required to carry out program functions. The size of these divisions is the result of transferring the old Conservation Department in toto to DEC and merely changing its name to Environmental Management and transferring the Division of Environmental Health Services in the Health Department in toto to DEC and merely changing its name to Environmental Quality. Since this is only an interim structure, these departments will be pared down in the future. Obviously, before this can be entirely accomplished, administrative services will have to be strengthened. Analysis prior and subsequent to the reorganization has focused primarily on design and new assignments within each of the two divisions, not on future integration of the two components.

As the Department moves to a consolidated regional organization, the

central office Program Divisions must maintain a high degree of functional supervision over the programs administered in the field to assure that the regions are administered in accordance with overall Department plans and priorities. To do this, the technical and program expertise in the central office Program Divisions must be continuously available to the Regional Director and his staff. Therefore, it was critical that the relationship between program units in the field and those in the central office be clearly defined, understood, and agreed upon. The Department established the following responsibilities for the Deputy Commissioners for Management and Quality:

- Developing program plans and priorities;
- Establishing and interpreting operating policies, standards and procedures;
- Establishing guidelines for the preparation of program budgets and work plans for the programs administered in the field;
- Reviewing budget requests for programs administered in the field and making recommendations with respect to the level of program services in the field;
- Providing field staff with program and technical standards, advice and guidance, and evaluating performance;
- Preparing recommendations for appointments of professional staff in the region for review by the Regional Director and the Deputy Commissioner for Field Services.⁶

Below is a description of the budgets, functions and activities of the Department's program divisions as related by Elizabeth Haskell's 1970 report, Nine States Look for New Answers:⁷

A. Environmental Quality (FY 1972 requested budget: \$5,819,915)*

The Environmental Quality section is devoted entirely to air, water and land pollution problems. Its three main operational divisions will cover almost every aspect and type of pollution. Most of this authority was inherited

*The budget for fiscal 1972 was actually \$5.5 million.

directly from predecessor agencies and boards (the Departments of Health and Agriculture and Markets, the interagency Air and Pesticides Control Boards) in the reorganization statute. The statute also provided a broad mandate to move into new environmental areas in which existing statutory authority was less specific than for water pollution control and some other fields. These new areas include solid waste regulation, land use planning, noise, and others. New legislation is anticipated in such areas in order for the DEC's pollution control divisions to proceed with a firm statutory base.

As in many states, a somewhat lopsided and unparallel situation exists with respect to programs covering different kinds of pollution problems. New York has moved much more rapidly into the water pollution area than in air pollution control and solid waste management. The Pure Waters Division represents the largest and oldest single activity in the Environmental Quality section. Regulatory authority here is the most specific and inclusive in purpose, sources, and types of pollutants, and many precedents for action have already been established. Air pollution control, and to an even greater extent solid waste management, are newer state efforts. A limited number of standards have been promulgated, and in the solid waste area little regulatory authority exists at present. Hitherto, the state's solid waste program has consisted mainly of planning and assistance to localities. The entire Environmental Quality section supports a field staff costing \$601,455.

(1) The Pure Waters Division (FY 1972 requested budget: \$2,933,533) was transferred intact from the Health Department with the exception of personnel concerned with public water supply. This Division is responsible for planning, research, standard-setting, monitoring and enforcement related to water pollutants, and for administration of the six-year-old Pure Water Program. The major element of this program is the allocation of federal and state grants to finance construction of municipal sewage treatment plants and interceptor sewers.

The anticipated total cost is \$3.8 million, including federal support. The Division plans, certifies and inspects these facilities, and provides technical assistance for local construction and operation. It carries out a comprehensive regional sewerage planning program and maintains a state-wide water pollution monitoring system. In its previous Health Department location, the Division issues a number of interstate and intrastate water pollution regulations, including some thermal pollution standards. These standards are being updated. The Division is presently undertaking studies on mercury and eutrophication problems, and setting up a stream/lake classification system. Future research on waste recycling will be located here. The Division issues permits for all discharges into state waterways from new sources.

(2) The Air Resources Division (FY 1972 requested budget: \$1,667,742) was also transferred in toto from the Division of Environmental Health Services in the Health Department. The state's air pollution control program has existed since 1957, and the 1966 New York Clean Air Act provided it with stronger regulatory authority. Most effort has been made in the identification and monitoring of harmful pollutants, and the state has also adopted many ambient, and some emission standards. Existing regulations govern open burning, dust, and odors and density of smoke discharges. Regulations also limit the discharge of contaminants from automobile exhausts and crankcase ventilation systems and the sulfur content of fuels to be burned in the New York City metropolitan area. Air quality classifications with corresponding standards have been completed for the entire state, including the federally-designated New York metropolitan air quality region. The Division of Air Resources is now upgrading existing standards, particularly for sulfur oxides, and setting standards for new sources of air pollution. The Division conducts comprehensive air

surveys and has developed a sophisticated state air monitoring network. Both the air and water divisions rely heavily on the Health Department's medical research and laboratory facilities for data on pollutant effects since there are only a few physicians in the entire Environmental Quality section. Some persons expressed concern that an in-house medical research capability be developed as soon as possible, since they believe reliance on the Health Department may have already produced inappropriate standard levels (i.e., perhaps too strict).

(3) The Division of Quality Services* which is in the process of being set up, will incorporate solid waste, radiation and pesticide activities. Its requested FY 1972 budget is \$617,185, of which the major portion, \$459,205, is for solid waste management programs. The solid waste program was formerly a part of the Division of General Engineering and Radiological Health in the Health Department's Division of Environmental Health Services. Solid waste activities are relatively new and consist primarily of in-house planning and planning support for local and regional governments. A ten-year comprehensive solid waste planning grant program was established in 1967, which has as its purpose the development of methods of disposal on a regional rather than a local basis. The program gives planning grants to counties and New York City for this purpose. Demonstration grants for the construction and testing of new facilities in localities are also given. Regulations on open burning and unsanitary facilities are in the process of being up-graded. Most of the state's solid waste program is presently financed by the Federal government. It is anticipated that in the years ahead the largest expansion of New York's

*Quality Services is the "catch-all" for the Quality Division. It is here that new programs originate. Once a program reaches a certain size, it is transferred into a division of its own, i.e. Air or Water.

pollution control responsibility will be in the solid waste management area.

The nuclear engineering, or radiation protection program, is also from the Health Department's Division of General Engineering and Radiological Health. It is very small, and the Public Service Commission presently has the major responsibility for power plant regulation. The DEC program includes the review of nuclear power plant plans, inspection operations, and monitoring for radiation discharges into the general environment according to Atomic Energy Commission standards. Studies of thermal pollution for nuclear plants, including uses of thermal discharges, are now underway.

The pesticides program, transferred from the Departments of Health, and Agriculture and Markets, is also very small. Research and regulatory activities are conducted, and strong new pesticides regulations were proposed by the Department last year.

B. Environmental Management (FY 1972 requested budget: \$29,525,000)*

The Environmental Management personnel outnumber the pollution staff by over four to one, and its budget is five times larger. The five divisions here were transferred in their entirety from the Conservation Department, and carry out traditional and familiar resource management functions. Approximately 1,500 of a total of 1,893 personnel are in the field. Conservation programs are supported mainly by general revenue state funds, rather than by segregated or trust funds from hunting and fishing licenses, fines and permit fees.

(1) The Division of Lands and Forests (FY 1972 requested budget: \$12,094,072) is responsible for the management of the state's over 400 reforestation areas

*The budget for fiscal 1972 was actually \$29 million.

on which timber is grown and harvested, and which are also used for recreation under the multiple-use concept. It also provides technical aid to private landowners to manage private forests, and is responsible for statewide forest fire protection and control of forest insects. The Division also has responsibility for the management of the two "forever wild" forest preserves of the state--the Adirondack and Catskill areas. At one time, consideration was given to the transfer of the Division's pest control section to the Environmental Quality side, since this program uses pesticides. Transfer is now no longer being considered.

(2) The Fish and Wildlife Division (FY 1972 requested budget: \$12,075,173) is responsible for the planning, supervision, and regulation of all fish and game activities. It manages the state's fish and wildlife resources for recreation and other purposes, enforces portions of the Stream Protection Law and controls hunting and fishing activities. The Bureau of Ecological Standards monitors pesticides levels and studies the effect of thermal pollution on fish life. This Bureau was also recently considered as a candidate for transfer to the Environmental Quality section because of the similarity of its work to other pollution control activities. (It remains an important political lobby).

(3) The Water Resources Division (Water Management Planning) carries out planning, research, regulatory, and some quasi-developmental activities. Planning constitutes a large portion of its work, and this includes comprehensive studies for multi-purpose development of water and related land resources for all river basins and regions of the state, and the state's portion of interstate river basins. It also collects data on water levels and flows, and conducts a statewide inventory and classification of surface and ground waters. The Division represents the state in interstate river

basin commissions, acts as a liaison with federal construction agencies such as the Corps of Engineers, and participates in flood and erosion control projects. The Division's regulatory activities are particularly important. It issues water use permits, both surface and underground, including for water removal, impoundments, flow alterations, etc. Its activities thus affect water supplies, sewer and drainage issues, flood plain control, and indirectly touch on industrial and agricultural practices. These, in turn, directly affect pollution concentrations in water bodies. The Department presently plans to elevate this Division's planning activity to a central environmental planning unit under the Commissioner, and to separate its regulatory and developmental functions into two divisions in the Environmental Management section. (Originally, the major programming of this division was done by means of an interagency commission whose staff was furnished by the Conservation Department. Also, regional commissions were set-up to develop area plans. However, the division did only planning and little implementation -- except in the construction of sewage treatment plants. Unfortunately, regional plans were not consulted before construction; conflicts arose and Water Management Planning was less than useful. Since its placement in DEC, its budget has been severely cut and its political power has waned.)

(4) The Division of Marine and Coastal Resources is responsible for the marine resources of the state, including fish and shellfish as a food source and commercial and recreational enterprises. (This is actually contained in one region, Region 1, and Mason Lawrence solely directs the activities of this division.)

(5) The Division of Mineral Resources establishes safety and anti-pollution standards for the mineral industry, leases state-owned lands for oil and gas

exploration, production and underground storage, caps abandoned oil wells to eliminate pollution and safety hazards, and provides technical assistance to the mineral industry. (This division is primarily interested in oil and gas regulation in the western part of the state.)

Field Services and Regional Operations

A. Background

The reorganization plan developed by the Commissioner and the Division of the Budget proposed an integrated and coordinated system to deliver environmental quality and management services at the local level. Prior to reorganization these services were being administered separately through 127 regional and district offices. The proposal recommended the eventual creation of environmental conservation regions covering the entire state each headed by a Director with responsibility for providing all departmental services.

In October, 1970, the organization and management unit of the Division of the Budget completed a follow-up study of the new department. As a first step, the Division of the Budget urged the Department to immediately begin implementation of a consolidated regional structure.

Consequently, from its creation, the DEC was committed to a new organizational structure which would combine existing field units for different programs into a single, consolidated regional network for all departmental programs.

In February, 1971, a Deputy Commissioner for Field Services was appointed, Stanley Legg. As a first step, a Task Force comprised of departmental personnel was established to work with the Deputy Commissioner to study the current field organization and operations and their relation to the central office divisions. The major objective of the Task Force study was the development of

a detailed organization structure and an operational plan for the delivery of services by the Environmental Conservation Regions which could be implemented by July 1, 1971.

The Task Force agreed to the broad guideline that the Regional Director, utilizing the expertise of his staff in the region, would execute the prescribed work plans and programs in accordance with operating policies, procedures and standards of enforcement prescribed by the central office. Also, agreement was reached upon the following objectives for the new field organization:

- Assure that the Regional Director's immediate job is manageable;
- Provide accountability for current programs;
- Establish a basis for moving to long-range organizational changes in an orderly manner;
- Consolidate regulation and environmental analysis functions;
- Provide a framework for expanding and strengthening law enforcement activities.⁸

It was agreed upon by the Regional Task Force that the major purposes for regions were: to administrate programs, report to Program Director concerning program effectiveness in achieving desired goals, and input information required for the planning process.

The Task Force prepared organizational and staffing charts for the new regions, outlined specific responsibilities in detail, prepared charts illustrating the major processing steps for new systems, and distributed summaries of new systems to Division Directors for comment. During the study, progress meetings were held with the Commissioner, Deputy Commissioners, Division Directors, and Field Supervisors for discussions and clearance of problem areas.

B. Interim Organization

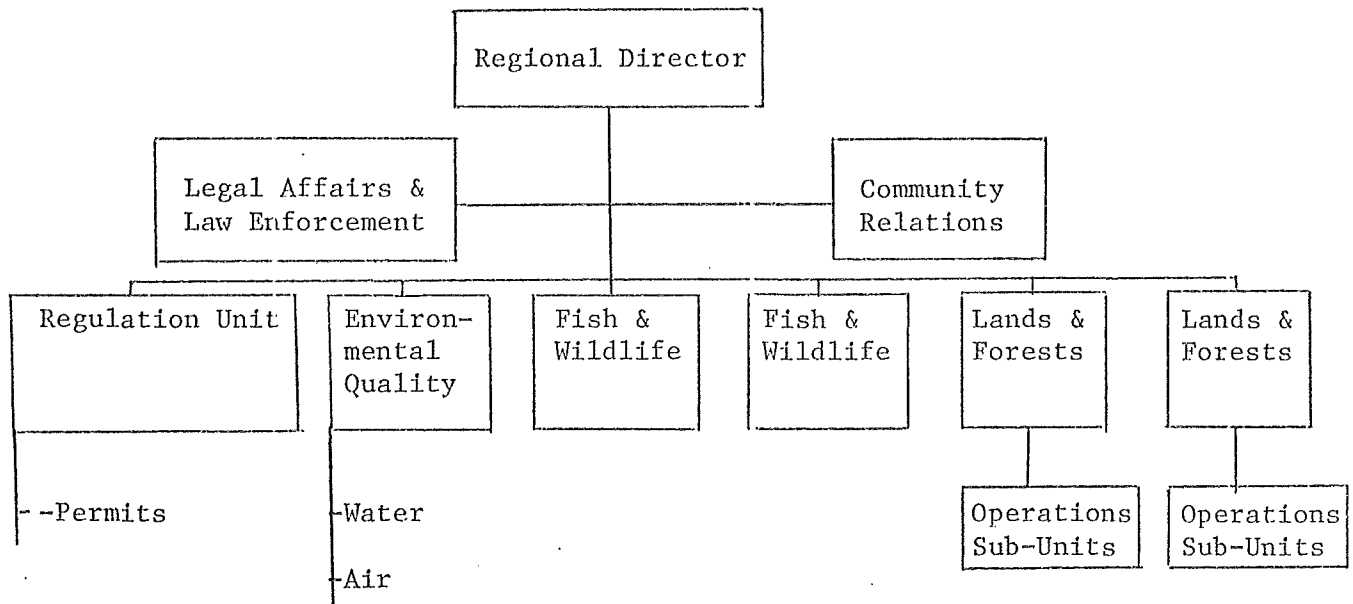
To assure that the Regional Director's immediate job was manageable, only those major programs which required close supervision and coordination in the field were included in the proposed organization:

- Environmental Quality regional offices
- Pesticide Control Inspection units of the Division of Quality Services
- Fish and Wildlife regional offices
 - . Stream Improvement units
 - . Rabies Control units
- Land and Forests district offices
- Law Enforcement regional offices
- Field units in the Division of Resource Management Services
 - . Water Regulation
 - . Mineral Resources
- Marine and Coastal Resources⁹

As a result, the proposed regional structure encompassed 82% of the previous field staff. The remaining 18% were distributed among special units such as winter recreation.

Another major consideration in organizing the new regions was the need to maintain accountability for current programs in the field and at the same time provide a basis for further consolidation of common functions. For example, the plan called for consolidating, to the extent possible, the routine construction, maintenance and repair activities in individual operations sub-units and the routine administrative and clerical housekeeping functions in individual administrative sub-units within both Lands and Forests and Fish and Wildlife in each new region. At the present, the operations sub-unit is located in Lands and Forests for both Lands and Forests and Fish and Wildlife in each region.

Since all nine of New York's regions are slightly different*, below is an example of a possible regional structure:



This interim organization utilizes these organization units:

Community Relations Specialists

When the regions were formed, there was an immediate need to establish a central point of contact in the region for the general public, the press, and the public and private environmental interest and sportsmen groups. An immediate requirement, therefore, was to designate a person to act in a staff capacity to the Regional Director to assist him in handling inquiries from the public, coordinating environmental conservation education, advisory, and assistance services for local community groups, and performing general public relations activities within the region. Refer to the following chart for a detailed list of Community Relations responsibilities.¹⁰

*The number of Fish and Wildlife and Lands and Forests units differ between regions.

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
COMMUNITY RELATIONS SPECIALIST

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Public Speaking

- screens requests for public speaking engagements
- maintains a "speakers bureau" listing of regional personnel
- coordinates assignment of regional personnel for speaking engagements
- assists the Regional Director in the preparation of speeches

- provides Statewide program direction
- provides current reference and backup material for speeches

Inquiries

- screens routine incoming inquiry letters and coordinates replies
- screens requests for technical assistance by local agencies and public or voluntary interest groups

- assigns inquiries to the region for response
- provides program direction on technical assistance to local agencies and public or voluntary interest groups

General Public Relations

- maintains a library of audio-visual aids and informational pamphlets
- reviews activities of regional citizen boards for compatibility with regional programs
- maintains contact with communications media for special coverage of events
- edits, prepares and distributes news releases, pamphlets, and other informational material
- directly responds to requests for general information/educational material
- assists conservation education activities in the region by providing assistance as required.

- provides Statewide program direction
- provides centralized library facilities
- prepares informational pamphlets and audio-visual aids
- reviews and edits major press releases
- prepares conservation education material

Legal Affairs and Law Enforcement

This new unit combines regional attorneys with the regional conservation officers, paralleling the new Office of Legal Affairs and Enforcement in the central office. The attorney is the staff arm of the Office of Legal Affairs and Enforcement in the central office in prosecuting pollution abatement cases and providing legal advice and guidance to the Regional Director and his key staff in the region. In addition, the regional attorney works closely with the Regional Conservation Officer as the conservation officers' surveillance and enforcement activities are expanded to include environmental quality and regulation programs. According to Legg, this has worked extremely well. The lawyer is not perceived as an administrator by the conservation officers; consequently these officers come to the lawyers with problems or questions.

Historically, enforcement was the job of game wardens in Fish and Wildlife. Field Services upgraded these wardens to the status of Regional Conservation Officers, increased their salaries, and gave them four weeks of training at a police academy. These officers now serve papers on violators, are "leg" men for the regional attorney, make inspections, and testify at hearings.

The Legal Affairs and Law Enforcement Unit did not become fully operational until: the conservation officers completed the air and water pollution training programs, attorneys were assigned to the regions, and the Office of Legal Affairs and Enforcement in the central office established enforcement policies and procedures defining the role of the conservation officers and the extent of their activities in the field. The Regional Task Force identified several specific functions for the conservation officers which could be performed without extensive training. The following list was viewed by the Office of Legal Affairs and Enforcement in the central office as a first step in fully defining the expanded functions of the conservation officers:¹¹

POTENTIAL CONSERVATION OFFICER FUNCTIONS*NEW FIELD UNITPROGRAM FUNCTIONS

AIR RESOURCES

- Document diesel emission violations
- Open burning
 - . process permits
 - . issue permits
- Sampling
 - . operation and maintenance of manual monitors
- Initiate Complaints
- Complaints
 - . investigate and reply
- Maintain abatement records
- Solid wastes
 - . inspection of facilities

PURE WATERS

- Oil spill documentation
- Initiate complaints
- Land fill leaching complaints
- Polluter complaints
- Marina pump out inspections
- Maintain abatement schedule records

REGULATION

- Stream protection and REA field analyses (routine)
- Pesticide inspections
- Review required for selected Fish and Wildlife permits

*These are potential surveillance functions which are or may be performed by the Conservation Officers to support regional program enforcement activities.

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
LEGAL AFFAIRS AND LAW ENFORCEMENT

SYSTEM OR
PROGRAM AREA

Legal Affairs

- reviews requests for enforcement hearings
- schedules and presents Department case at selected enforcement hearings
- prepares draft of Commissioner's order for selected cases for submission to the Central office
- provides counsel to Conservation Officers in enforcement actions before Justices of the Peace
- meets with alleged polluters to arrange stipulations
- drafts proposed changes in legislation which are of direct impact to the specific region
- reviews legislative bills which primarily affect the region
- provides program direction and Statewide policies and procedures for enforcement proceedings
- reviews draft Commissioner's enforcement orders prepared by the regional lawyer
- schedules and presents Department case at selected enforcement hearings not held by the regional lawyers
- prepares Commissioner's enforcement orders for submission to the Commissioner
- reviews draft bills prepared by the regional lawyers
- submits legislative bills to the region for review and drafts departmental position for Commissioner's signature

Investigations

- investigates water pollution problems which have resulted in fish kills
- investigates violations of fish and wildlife laws
- assists the Regulation Unit in stream protection and regional environmental analysis investigations
- investigates hunting accidents
- performs special assignments for Environmental Quality
- provides program direction and Statewide policies and procedures for investigatory and routine patrol assignments
- assists Regional Conservation Officers in conducting cases of a difficult or sensitive nature
- reviews and recommends plans for assuring adequate enforcement coverage based on regional needs

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Enforcement

- conducts routine patrols on State lands, cooperator lands, and waters in enforcing Fish and Wildlife law and Stream Protection law
- issues warnings and summonses for violations of Fish and Wildlife law and Stream Protection law
- prepares and prosecutes cases before the Justice of the Peace
- testifies at administrative hearings
- conducts hearings on license revocations
- maintains enforcement records
- assists the regional counsel in legal affairs

- provides program direction, Statewide policies and procedures for enforcement activities including the training for arrests and prosecutions
- reviews regional enforcement records and compiles statistics on a Statewide basis

Miscellaneous

- assists other field Department units in surveys and inspections
- provides mutual assistance to County Sheriff and State Police
- issues fishing and hunting licenses at Regional Headquarters
- prepares inputs for the regional budget
- conducts public information and education activities
- advises on hunting and fishing locations
- maintains contact with local information sources

- provides program direction and Statewide policies for fishing and hunting and for mutual assistance with police agencies
- reviews and recommends on regional budget request for field programs
- established uniform and supply requests for Conservation Officers

Environmental Quality

The new Environmental Quality Unit is made-up of the existing Regional Quality offices with little or no change. One exception is that the less technical enforcement activities are assigned to the new Legal Affairs and Law Enforcement Unit in the region. This change was closely coordinated with the work of the local health agencies which were currently operating in these areas.

Also, the regional attorney works with the Environmental Quality engineers in preparing pollution cases for hearings and enforcing pollution abatement orders.

Establishing Environmental Quality Units in each of the new nine regions presented an added complication--there were only six Environmental Quality regional offices in the state. Moreover, a substantial portion of the routine field work was accomplished by county and city health agencies and the health department district offices. These relationships with local health agencies required that each region must have high-level experienced staff to manage the program in the field.

Therefore, initially, the existing Syracuse, Albany and White Plains Environmental Quality Units were each required to serve two regions. This situation was far from satisfactory, but it was continued until these units were augmented to the point where the existing staff could be divided.

Following is a list of Field vs. Central Office responsibilities in this program area:¹³

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
ENVIRONMENTAL QUALITY
PURE WATERS UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Identification of
Polluters

- conducts field surveys, collects data, and prepares case reports on suspected polluters
- documents oil spills
- contacts Coast Guard and Central office regarding oil spills
- coordinates equipment use on oil spills
- conducts sanitary surveys and follows-up on problems noted
- coordinates with local health officials regarding sanitary problems observed
- collects data on special surveys
- collects data at land fill areas to determine if pollution exists

- provides manpower assistance on major surveys
- provides technical guidance on oil recovery equipment, and hazardous chemical constituents.
- coordinates oil and hazardous chemical spills
- establishes standards for chemical constituents for classified waters
- established policy and procedures guidelines
- evaluates field reports and consolidates data for final report

Complaints

- investigates and collects data on polluter complaints
- replies to complainant or Central office if required
- investigates and collects data on nuisance complaints
- replies or transmits findings to local health departments for follow-up

- maintains record of complaints forwarded from Commissioner's and/or Governor's office
- refers complaint letters to the field for investigation and preparation of reply

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Enforcement
(Technical)

- prepares case reports on known polluters
- updates Central office listings of abatement schedules periodically
- attends hearings and/or prepares affidavits concerning enforcement action
- develops abatement schedules for Commissioner's orders
- monitors polluter abatement schedule projects

Operation and
Maintenance
Grant Program

- inspects and samples treatment facilities
- reviews and transmits O&M applications

Waste Outlet
Registration

- prepares testing and measuring schedules
- reviews monthly reports on testing and the monthly reports

- assists the field in obtaining evidence on pollution violations
- reviews case reports for technical data
- attends hearings and conferences on pollution cases
- reviews and approves abatement timetables
- maintains follow-up procedures on abatement orders and evaluates progress
- maintains record keeping (data processing) on identified polluters
- assists the office of Counsel and the Attorney General on technical information
- coordinates enforcement action with other program activities
- reviews and processes grant applications
- determines eligibility of questionable expenditures
- maintains inventory of municipal treatment facilities and grant processing
- prepares annual budget requests for local assistance payments
- recommends type and frequency of examinations to be performed on waste treatment facilities
- evaluates testing and measuring results, and recommends follow-up investigations
- maintains records on performance
- provides technical reference on waste treatment problems

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Collection and
Treatment

- coordinates with consulting engineer on local problems regarding comprehensive sewage studies
- reviews draft studies and comments to comprehensive utility planning section
- attends conferences and performs inspections for construction grant projects
- provides selected local information concerning these projects
- reviews and sends comments to Bureau of Engineering Design on waste water facilities reports
- reviews and approves operation and maintenance manuals
- reviews and approves treatment or disposal facilities for hospital and nursing homes, general sewage facilities and marina pumpout facilities
- trains sewage treatment plant operators
- arranges for laboratory instruction
- reviews and recommends operators qualifications
- certifies taxable items for industrial treatment facilities tax certification
- issues initial permits to operate for facilities approved by field
- prepares testing and measuring programs for municipalities and industries

- determines acceptability of application for comprehensive sewerage study funds; availability of planning funds; approves consulting engineers selection
- prepares specification and contracts for comprehensive sewerage study
- reviews draft reports of study; approves final report, and distributes
- coordinates state and federal requirements for construction grants
- conducts eligibility and prework conferences for construction grants
- performs quarterly construction progress inspections and approval of payments
- reviews and accepts waste water facility reports and final plans for sewage and industrial waste projects
- performs drainage basin evaluation studies for waste assimilative capacity; and reviews waste water reports for assimilative capacity loading
- develops regional drainage basin plans for Federal requirement
- issues and maintains records of permits to construct and to operate sewage and industrial waste treatment facilities
- reviews and approves water-craft pollution control equipment
- processes operators application for certification
- performs special investigations on industrial and sewage treatment facilities
- establishes standards for industrial and sewage treatment
- provides instruction for training courses
- approves industrial waste tax certification

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Water Quality
Surveillance

- collects selected samples
- responds to Central office notification of high readings on sampling and automatic monitoring system

- prepares sampling schedules and contracts for maintaining manual surveillance network
- processes water quality information through automatic data processing
- establishes and maintains automatic sampling stations and communications equipment
- reviews and evaluates water quality data for pure water program status
- produces periodic reports and responds to water quality data requests
- evaluates and establishes network sites

Multi-purpose
Programs

- prepares regional environmental analysis reports when required
- prepares replies on conflicting project opinions
- prepares inputs for the regional budget
- conducts public information education activities
- coordinates and evaluates programs administered by local health departments

- prepares material and reports for Federal enforcement conferences, State, and international compacts, Governor's and Commissioner's offices
- maintains policy and procedure manual items and program guidelines
- reviews proposed laws, and prepares rules and regulations for implementing laws
- establishes, implements, and reassigns Pure Water Program priorities
- conducts public information education activities
- prepares the central office budget and reviews regional budgets

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
ENVIRONMENTAL QUALITY
AIR RESOURCES

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Environmental
Analysis Reports
(EAR's)

- obtains and reviews EAR applications to register all industrial process sources
- recommends and signs environmental ratings for air pollutions sources
- requests stack test to verify applicant's data (if required)
- inspects source to verify data in application, as required
- issues certificate to operate if application's emissions comply with Part 187

- develops forms, manual items and other procedures to implement in the field
- reviews and audits field progress on EAR review
- provides additional technical expertise to the field to facilitate EAR review

Process
(Industrial)

- obtains and reviews plans for all new or modified industrial process sources
- issues permits to construct if applicant's plans meet specifications
- inspects completed installations to verify compliance with specifications
- issues certificates to operate for sources constructed according to specifications and in compliance with air rules

- develops forms, manual items and other procedures to implement in the field
- reviews and audits field progress on industrial process application review
- provides additional technical expertise to the field to facilitate process application review

SYSTEM
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Enforcement

- logs and transmits complaints to local environmental agencies for follow-up
- logs and investigates complaints from complainants when there is no local environmental agencies
- investigates violations of State air pollution laws and rules
- collects data to document alleged violations
- prepares case reports to initiate enforcement process
- provides testimony at hearings with alleged violators
- confers with polluters to develop abatement schedules
- prepares abatement schedules for inclusion in Commissioner's orders
- monitors schedules to determine compliance with orders

- develops rules, regulations and air quality standards as a basis for program development
- develops manuals and policy items for enforcement strategy
- conducts enforcement workshops to assist field personnel in the implementation of enforcement programs
- replies to complaints that require either the Governor's or Commissioner's signature

Incinerators/
Fuel Burning

- obtains and reviews applications for installation of new or modified facilities
- issues permits to construct if application meets requirements
- issues certificates to operate if facility operates in accordance with air rules
- inspects sources, as required

- develops forms, manual items and other procedures to implement programs in the field
- reviews and audits field progress on incinerators/fuel burning review
- provides additional technical expertise to the field to facilitate incinerators/fuel burning review

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Pollution
Emergencies

- reviews action plan from polluters to determine acceptability during pollution emergencies
- determines whether action plans during periods of high air pollution potential are being carried out
- enforces violation of pollution emergency rules

- develops guidelines for preparing action plans during emergency conditions
- initiates pollution alerts during periods of high air pollution potential

Sampling

- operates and maintains monitors (manual and continuous) to obtain and process air quality data
- operates and maintains equipment for special air pollution studies
- assists in stack sampling
- collects fuel samples and submits for analyses

- evaluates new monitoring techniques and repairs test equipment
- conducts stack tests to determine compliance of sources with emission limitations
- operates and maintains manual and special air samplers to monitor air quality
- processes sampling results and produces periodic reports to analyze air quality data
- coordinates the maintenance and operation of continuous air monitoring stations

Miscellaneous

- represents the Department at public meetings
- disseminates air pollution information to the general public
- coordinates and evaluates programs administered by local environmental agencies

- develops a Statewide program to achieve effective air pollution control
- provides program direction to the field units
- speaks to local groups about air pollution programs
- trains the field staff to evaluate the density of black smoke emissions
- develops implementation plans for air quality control regions in the State
- replies to correspondence from citizens and local groups on air pollution related topics
- conducts public information education activities

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Miscellaneous
(Con't)

- prepares inputs for the regional budget
- conducts public information education activities
- assists the Central office in the review of local environmental agencies applications for Federal grants
- documents diesel violations for preparation of case reports (Part 193)
- processes and issues restricted burning permits

- prepares the central office budget and reviews regional budgets

Solid Waste

- inspects solid waste facilities to determine if refuse disposal areas are operating in accordance with requirements

- coordinates the development of solid waste planning contracts

Regulation Unit.

The proposed Regulation Unit serves a twofold purpose in the new regions. It allows the consolidation of the review and evaluation of environmental impact statements to assure adequate consideration and coordination of all program interests in the field. Similarly, the Regulation Unit serves as the central point for processing applications for permits which are related to the broad environmental concerns of the Department. These include permits for construction of dams and docks, disturbances of streams, dredging and filling in navigable waters, approvals for water supply, and open burning permits. Those permits which are related to the construction of sewage treatment facilities, discharges to the air from fuel-fired boilers and incinerators, or industrial process continue to be processed in the Regional Environmental Quality Units; however, the assessment of the total effect on the environment is coordinated by the Regulation Unit.

The Regulation Unit also includes the miscellaneous technical field groups that deal with regulation-related activities. It was formed from the existing field units of stream protection, pesticide inspection, and water resources planning. The role of the water resources staff in the field depends on a policy decision which has not been completely made.

Following is a detailed list of Regulation responsibilities:¹⁴

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
REGULATION UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Regional
Environmental
Analysis

- reviews and processes requests for environmental impact statements, environmental assessment summaries, A-95 reviews, DOT plan review, et al
- inspects and evaluates sites (if required)
- coordinates review and comments from other field units
- coordinates with Central Planning Office (program direction)
- coordinates with other regulatory and planning agencies (federal, State and local)
- submits integrated Regional reports to Central office

- provides standards and Statewide policy on environmental analysis
- screens incoming requests, transmits requests to field (and/or central office divisions), coordinates comments and prepares integrated departmental positions
- provides coordination with central offices of State and Federal agencies

Stream
Protection

- meets with and advises prospective applicants
- reviews and processes applications for stream disturbances, dredging and fill in navigable waters, dams and docks
- inspects and evaluates sites of proposed work (if required)
- prepares case for hearing, if significant objections to project
- coordinates with other field units
- coordinates with Central Office Bureau of Water Regulation
- coordinates with other regulatory and planning (federal, State and local governments)

- provides standards and Statewide policy and procedures
- provides engineering criteria for dam design; provides engineering review of dams and large docks
- provides technical assistance (engineering, geology, etc.)
- coordinates with central office units
- coordinates with central offices of other state agencies and federal agencies
- provides technical assistance in negotiations with applicants
- arranges & conducts administrative hearings or applications involving substantial public interest or which the Regional Office disapproved because of adverse environmental effects

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Stream
Protection
(Con't)

- negotiates with applicants to modify applications in order to minimize adverse environmental effects
- issues permits for stream disturbances, dredging and fill in navigable waters, dams and docks

- prepares decisions following hearings, issues permits or denials
- consults with Department Counsel as required on litigation and legislative changes

Water Supply

- meets with and advises prospective applicants
- reviews and processes applications for public water supply systems including water sources
- inspects and evaluates sites (if required)
- assists in preparing case for hearing, if significant objections to the project
- coordinates with other field units
- coordinates with Central Office Bureau of Water Regulation for program direction
- coordinates with other regulatory and planning agencies (federal, State and local)

- provides overall program direction
- provides standards and Statewide policy and procedures
- provides engineering and safety criteria for water supply and distribution structures
- provides technical (engineering, geology, etc.) assistance in site inspection and evaluation
- coordinates with central offices of other State agencies (particularly Health and Public Service) and Federal agencies
- provides technical assistance in negotiations with applicants; meets directly with applicants on large major projects
- arranges and conducts hearings on applications involving substantial public interest or which the Regional Office disapproved of because of adverse environmental effects
- prepares decisions approving or denying application (for signature by Deputy Commissioner for Environmental Management)
- consults with Department Counsel as required on litigation and legislative changes

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Pesticides

- inspects premises of retailers and wholesalers of pesticides
- reviews applications for permits from pesticide manufacturers and pesticide users
- maintains contact with public (particularly farm groups) to provide information on pesticide control programs

- provides overall program direction
- provides regulations and Statewide policy and procedures on pesticide control
- provides technical assistance on pesticides control and inspection
- coordinates with Central Office units, central offices of other state agencies, and Federal agencies
- issues permits to pesticide manufacturers and pesticide users

Fish and Wildlife - Lands and Forests

The Fish and Wildlife Regional Office and Lands and Forests District Office responsibilities existing before reorganization remained substantially the same. However, in each of these Units steps were taken to modify the internal organization to consolidate operational-type functions and administrative services functions.

Prior to reorganization, a significant portion of the Lands and Forests programs in the field was concerned with protecting and managing the State's forests and providing recreational facilities, while Fish and Wildlife Units were responsible for protecting and managing the fish and wildlife resources in the State. Each of these Divisions had its own labor force and equipment and operated its own maintenance and repair facilities in the field. Moreover, within each of these units a significant amount of time was being spent by professional personnel on routine personnel activities, purchasing and house-keeping functions. To the extent possible, construction, maintenance, and repair activities were consolidated in an Operations Sub-unit in an existing Lands and Forests office and the routine administrative and clerical functions in individual Administrative Services Sub-unit within both Lands and Forests and Fish and Wildlife. At first it was planned that these two separate sub-units would be combined to serve the entire region; however, this idea has been rejected because Regional Directors already have too many units reporting to them.

Modifying the existing Lands and Forests and Fish and Wildlife Units to conform to the new regions presented a problem exactly opposite to that of the Environmental Quality Units. There were fourteen existing Lands and Forests Districts in the State. Therefore, in a few of the new regions there

were two or three Lands and Forests District Units. Similarly, in the new Region 5 there were two Fish and Wildlife Units. Under the interim organizational plan these Units continue to operate independently and report separately to the Regional Director.

Below is a list of field vs. central office responsibilities in these program areas:¹⁵

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES

FISH and WILDLIFE
MANAGEMENT UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Environmental
Preservation

- develops recommendations for land and water acquisition, zoning, dedication, and transfer of jurisdiction
- reviews land use, water, and air quality criteria established by the Department
- makes recommendations to modify land use, water and air quality criteria
- makes stream reclassification (A B C, D) recommendations based on field investigations and biological sampling
- recommends fish and wildlife control measures when numbers or occurrence of species are damaging to habitats
- provides fish and wildlife technical inputs to REA requests including, Stream Protection applications and PNRS and DOT subjects

- assists field units in fish and wildlife technical inputs to REA requests as required
- establishes policies and priorities concerning acquisition, zoning, dedication, and transfer of jurisdiction activities
- reviews and approved field recommendations for land and water acquisition, zoning, dedication and transfer of jurisdiction and coordinates activities across regions
- provides for purchasing, surveying, and title searching activities
- develops criteria for land use, water and air quality and evaluates regional conformance to established criteria
- reviews field data, conducts hearings, and establishes broad policies for fish and wildlife control measures and issues them when appropriate

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Species
Management

- conducts population and harvest status surveys and inventories
- monitors productivity and occurrence of important species
- makes trap and transfer recommendations of segments of fish and wildlife population
- makes hunting and fishing season harvest recommendations (season length and bag limits)
- conducts habitat enhancement technique recommendations
- recommends new species-establishment introductions
- makes endangered species surveys and recommendations
- recommends fish and wildlife control measures for nuisance situations
- prepares technical evaluations concerning species management activities

- establishes special orders and regulations for hunting and fishing seasons
- incorporates field inputs on habitat enhancement techniques with Central Research and determines Statewide guidelines
- reviews recommendations, establishes overall policy and plans new species establishment
- establishes, reviews, and recommends legislation regarding endangered species
- determines general policy, coordinates Statewide control procedures for nuisance situations
- promulgates and issues special orders and regulations
- reviews and approves technical evaluations concerning species management activities

Technical
Services

- plans and determines private landowner cooperative agreement programs and projects
- provides direction and gives administrative and technical support to Fish and Wildlife Management Boards
- acts as secretary to FWMA regional board
- establishes fish and wildlife practices and programs for application on private lands
- works with town, county, and regional Conservation Advisory Councils and other citizen conservation groups
- carries-out cooperation assistance and technical review responsibilities with SCS and ASCS (REAP)

- sets Statewide policy on FWMA-related activities and sets State priorities for FWMA development
- reviews activities of regional Fish and Wildlife Management Boards and services the State Board
- coordinates inter-regional activities and sets Statewide policy for Conservation Advisory Councils and other citizen conservation groups
- adopts State practices and operational guidelines related to SCS and REAP activities
- determines Statewide emphasis and policy on fish and wildlife education dissemination activities and provides staff when necessary to regions to support education activities

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Technical
Services
(Con't)

- prepares inputs for the regional budget
- conducts public information and education activities
- provides technical wildlife control information to private landowners
- screens nuisance wildlife complaint contacts for field service response
- develops comprehensive management, development, and public use plans for State Fish and Wildlife management multiple-use areas and cooperator private lands (FWMA)
- develops regional plans, and provides planning inputs to the Statewide plan and other agency regional resource planning projects
- coordinates with Conservation Officers for co-operator enforcement activities
- make technical field investigations related to the issuance of special Department regulations, orders, licenses and permits

- assists Region in development of wildlife control techniques and disseminates control information
- defines extent of local assistance in wildlife control to be provided by the regions
- establishes policy guidelines for land management and public use plans and reviews and approved plans prepared by the Regions
- determines requirements for Statewide resource planning projects
- establishes guidelines for regional planning and provides plan review
- consolidates regional inputs into State plans
- develops Statewide policy regarding the extent of co-operator enforcement services
- conducts public information education activities

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
FISH and WILDLIFE
OPERATIONS UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

General
Operations

- implements habitat enhancement projects (e.g. developing ponds and marshes, treating soils and waters, planting trees)
 - develops and maintains planned public use and access facilities
 - cooperates with Bureau of Land Acquisition to carry out field acquisition and lease requirements (surveys, title reviews, title objections, closings, and surplus property demotions)
 - executes cooperative agreements with private landowners
 - administers wildlife sanctuaries
 - operates specially-regulated quality and hunting areas
 - performs field reclamation activities
 - performs fish and wildlife stocking and transfer activities
 - makes non-technical field investigations related to the issuance of special Department licenses and permits
 - provides field services when required for nuisance wildlife complaints
 - controls wildlife and fish populations where habitat damage is occurring
 - provides field services to other State and federal agency programs including SCS and ASCS
 - posts wildlife management and private operator lands
 - maintains equipment and building
- reviews selected habitat enhancement projects to determine regional compliance with program objectives and technical standards
 - carries out land acquisition activities
 - reviews wildlife sanctuary operations, special area operations and reclamation project results related to private landowner co-operator agreements
 - collects equipment costs for Federal reimbursement

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Stream
Improvement

- conducts and maintains stream improvement dams
- constructs and maintains parking lots
- constructs simple bank controls
- provides advice to landowners on stream enhancement projects
- procures wood materials for stream improvement building
- plants trees and shrubs for stream improvement projects

- establishes Statewide priorities for stream improvement emphasis
- provides engineering support for larger, more complex dams
- reviews selected dam projects to determine regional compliance with program objectives and technical standards
- defines extent of local assistance to be provided by the regions for stream enhancement projects
- coordinates inter-regional requests when required for stream improvement building materials
- coordinates regional requests for trees and shrubs with central nursery facilities

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
FISH and WILDLIFE
ADMINISTRATIVE SERVICES UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Personnel, Budget
and Purchasing
Clerical Support

- files records and performs bookkeeping
- processes permits and applications
- aids in the preparation of reports
- prepares time-keeping records
- provides typing, steno, and clerical support in all program areas

- defines formats, procedures, and schedules for field records, budgets, and reports
- issues and maintains administrative procedures manual
- compiles costs by program and activities
- audits expenditures by program and activities
- compares accomplishments to projects and program costs and plans
- compiles data and prepares summary reports on costs and accomplishments as reported by the regions
- prepares inputs to the central office budget and reviews regional budgets

Janitorial
Services

- provides general custody for district office building and ground maintenance

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
LANDS and FORESTS
FOREST MANAGEMENT UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Private and Municipal Landowner Assistance

- inspects forest resources and develops a management plan to meet the specific land management goals of the owners
- marks timber for harvest and estimates the volume of wood to be cut
- identifies timber sale markets and assists the owner in developing a sales contract
- processes applications for landowner reimbursement
- assists the landowner in reforestation techniques (e.g. deciding the species to plant, pruning and thinning advice, etc.)
- provides technical assistance to local county or regional planning boards
- develops economic incentives for commercial forestry related industries

- reviews field activities of the FPA program with the U.S. Forestry Services
- reviews and processes tree orders for reforestation purposes
- provides technical assistance to the field as required
- performs routine field inspections to insure uniformity in program implementation
- collects and presents data for inputs to Comprehensive River Basin studies
- provides technical assistance to forest related industries in order to encourage growth and planned development
- processes applications (Fisher Tax Law and county applications under the county forestry program)
- sets Statewide policy on FPA-related activities and sets State priorities for FPA development
- reviews activities of regional FPA Boards and services the State Board

State Forest Management Practices

- boundary line maintenance
- conducts forest inventories on State lands
- develops management plans for State lands
- marks timber for harvesting and prepares timber sale contracts
- prepares inputs for the regional budget
- conducts public information education activities
- investigates forest related Regional Environmental Analysis activities

- administers the forest tree nursery program
- coordinates and directs the forest inventory program
- maintains liaison with outside forest related organizations (College of Forestry, Cornell University and the U.S. Forestry Service)
- coordinates and develops programs for the sale of State forestry products
- prepares manuals which define job responsibilities and operating procedures

SYSTEM OR
PROGRAM AREA

State Forest
Management
Practices (Con't)

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

- develops and coordinates sample plot program and procedures
- sets priorities and establishes budgets for new lands to be acquired by the State
- establishes Statewide policies and procedures for Forest Preserve lands

SYSTEMS OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Insect and
Disease Control

- conducts field inspections to identify and diagnose diseases and insects
- collects samples of disease or insect infested plant life
- determines the need for spraying or control programs
- contacts landowners for permission to aerial spray
- assists in aerial spraying
- performs manual ground spraying and physical control work
- samples results of spraying to determine the degree of control achieved
- investigates adverse affects of spraying
- maintains spray equipment
- provides technical advice to private landowners on forest insect and disease problems

- coordinates the State aerial spray program
- provides technical assistance to the field when required
- prepares manuals which define job responsibilities and operating procedures
- prepares contracts with commercial firms for aerial spraying
- provides technical assistance to the public on forest insects and diseases
- prepares reports to the Federal government for reimbursement on insect and disease programs
- cooperates with local universities and others on research projects

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
LANDS and FORESTS
FIRE CONTROL UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Fire prevention, detection,
pre-suppression, and
suppression

- maintains fire fighting equipment
- conducts training courses in fire suppression techniques for local volunteers
- organizes and trains fire wardens
- inventories private fire fighting equipment and manpower
- maintains fire access trails and roads
- supervises State personnel and local volunteers in the suppression of forest fires
- conducts educational programs to make the public aware of causes and results of wild fire
- disseminates fire prevention literature to the public (e.g. Smokey the Bear information)
- supervises tower observers during fire seasons
- coordinates aerial surveillance in the detection of forest fires
- patrols and investigates fire reports
- prepares inputs for regional budget
- conducts public information education activities

- prepares manuals which define job responsibilities and operating procedures
- develops and evaluates new fire-suppression techniques
- prepares educational material relating to fire suppression and issues to the field
- prepares and processes contracts for aerial surveillance
- reviews Federal listing of surplus equipment and procures items relating to fire-suppression
- operates and supervises maintenance of radio communications system
- issues daily weather bulletins to district offices on fire weather conditions
- coordinates inter-district efforts in large scale fire-suppression activities
- coordinates aircraft use for fire-suppression and search and rescue patrols
- maintains a Statewide listing of fire wardens and assists in their training
- develops and monitors training courses for personnel
- audits fire reports and payroll records submitted for voluntary fire-fighting personnel
- coordinates interstate programs with the Northeastern Forest Fire Protection Comm.
- conducts public information education activities

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
LAND and FORESTS
OPERATIONS UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Management of
Campsites, Day use
Areas and Boat
Launching Sites

- enforces rules and regulations
- issues permits and collects fees
- maintains cleanliness of grounds and facilities
- reviews proposals for new facilities

- administers State ski areas and the Whiteface Mountain Memorial Highway
- audits and reviews the collection of fees at recreational facilities
- prepares and processes contracts for concession establishments on State facilities
- reviews and issues Department approval for municipal recreational facility applications
- conducts periodic inspections of recreational facilities

Maintenance and
Construction

- performs minor construction and maintains campsite facilities
- maintains tools, mechanical equipment
- maintains forest resources facilities (e.g. horse trails, snowmobile trails and miscellaneous buildings)

- coordinates capital construction projects with Central Engineering (e.g. reviews plans, sets priorities)
- coordinates, plans, and schedules construction contracts

General
Operations

- performs operational silviculture activities (e.g. pruning, thinning, etc.)
- supervise logging operations at Correction Camps
- operates sawmills, treatment plants, and sign shops

FIELD vs. CENTRAL OFFICE RESPONSIBILITIES
LANDS and FORESTS
ADMINISTRATIVE SERVICES UNIT

SYSTEM OR
PROGRAM AREA

FIELD RESPONSIBILITIES

CENTRAL OFFICE RESPONSIBILITIES

Personnel, Budget
and Purchasing
Clerical Support

- files records and performs general bookkeeping
- processes permits and applications
- aids in the preparation of reports
- prepares time-keeping records
- provides typing, steno, and clerical support in all program areas

- defines formats, procedures, and schedules for field records, budgets, and reports
- issues and maintains administrative procedures manual
- compiles costs by program and activities
- audits expenditures by program and activities
- compares accomplishments to project and program costs and plans
- compiles data and prepares summary reports on costs and accomplishments as reported by the regions
- prepares inputs to the Central Office budget and reviews regional budgets

Regional Director

The regional director is solely responsible for the administration of all these regional units. According to the Task Force study on regions, the director's responsibilities are:

- Supervising, coordinating and assisting the regional staff in the day-to-day administration of the regions;
- Preparing a consolidated regional budget based on guidelines and reviews by the appropriate central office divisions;
- Establishing priorities and procedures for scheduling and performing field operations based on immediate needs, but consistent with Department program plans and priorities;
- Defining the delegation of responsibility, authority, and accountability of his subordinates' work within the field organizational structure;
- Evaluating subordinates' performance to meet field responsibilities and operating policies, standards, and procedures established by the central office program divisions;
- Establishing and maintaining relationships with outside groups and organizations;
- Ensuring that program-related work requiring technical review is transmitted to the appropriate central office division on a timely basis.¹⁶

The main criterion in the selection of regional directors was that they were well-known and respected in their regions. Usually, personnel from Fish and Wildlife, quality engineers, or popular non-governmental personalities were chosen. According to Mason Lawrence, deputy commissioner of Environmental Management, 3/4 of the directors are professionals and 1/4 were political appointments. In addition, Lawrence pointed out that since a director is

extremely critical to operations he should be an administrator, not a specialist who favors one management area over another. Directors usually handle noncontroversial decisions as opposed to controversial decisions made by the Albany staff which has the authority to hold hearings. Director's salaries range from \$26,000 to \$29,000.

Although assistant directors are needed, DEC could not afford them under the present austere budget conditions.

At this time, the goals set for the regional director by Field Services include:

- (1) Initiate regulation over flood control, stream improvement, and land acquisition efforts;
- (2) Establish operations sub-units;
- (3) Persuade field personnel to report to regional directors, not program staff.¹⁷

Budget Process

Starting last year, the regional offices are required to make a budget request for the field prepared on the basis of guidelines from the appropriate program division (Environmental Management or Environmental Quality). This budget request is then submitted to Field Services which routes the different pieces to program personnel. If there are any conflicts, both program and regional personnel submit recommendations to the Commissioner whose line offices evaluate the budgets. Since the DEC did not have an adequate base by which to determine the usage of manpower resources in the field, personnel time reports have been devised so that budgets can be sharpened.

Field Services

The Deputy Commissioner of Field Services, Stanley Legg, is accountable for the development and overall coordination of regional efforts. As outlined

by the Regional Task Force his specific responsibilities are:

- Supervising, coordinating, and assisting the Regional Directors in the administration of the nine field regions;
- Reviewing the consolidated regional budget requests;
- Interpreting departmental administrative policy and disseminating program policy and the interpretation of program policy information to the field regions;
- Reporting to the Commissioner on a timely and periodic basis concerning the effectiveness of field operations.¹⁸

According to Legg, this type of job is essential at the beginning of the regionalizing process; however, Legg feels it could be eliminated at a later stage if the regions are functioning without major problems.

Presently everything does not have to be channeled through Field Services; field personnel can go directly to their counterparts in programming if the regional director is informed. Legg pointed out that too much administration is being done by program people in Albany; this situation causes tension in the regions. Field Services is preparing a policy manual for use by the regional offices; it will contain the basic operating procedures of the agency and give direction to field activities. However, as Biggane pointed out, regions are semi-autonomous operating units, and each has to be treated as an individual unit with policies geared to specific regional conditions.

The director of Field Services develops operation units while his assistant director is responsible for quality administration problems.

Legg stated that the ideal departmental organization would place professionals, e.g. biologists, in Resource Management and maintenance personnel, e.g. laborers and technicians, in Regional Operations. That is, regional operations would strictly implement programs and provide feedback

for further planning and evaluation of programs. In addition, Legg stated that the ideal field organization could be simplified to three branches: Resource Management, Operations, and Quality Regulation.

C. Field Office Boundaries

Prior to the report of the Regional Task Force, the Department had developed proposed regional boundaries which divided the state into nine geographical areas. The Task Force study showed that the designated boundaries were well designed for regional administration and that they best satisfied the Department's requirements with respect to the following factors:¹⁹

- Coordinated regional planning

In developing a regional scheme for the new field services structure, every effort was made to conform to the eleven comprehensive planning and development regions established by the Office of Planning Coordination (OPC). However, OPC regions were not completely suitable; OPC regional boundaries cut directly through several areas containing important natural resources. Consequently, three variations in OPC regions occurred.

- Program Size

Each region should be large enough to provide an adequate basis for staffing each of the major environmental conservation programs.

- Program "mix"

Each region should contain a mixture of program responsibilities; that is, they should include both metropolitan and rural areas.

- Administrative Responsibility

Each region should be large enough to encompass sufficient program responsibilities and personnel to justify the number and level of personnel,

including the position of Regional Director, needed to adequately staff the new regional offices. On the other hand, unwieldiness should be avoided.

- Communications

The region should be compact and logically drawn to facilitate physical communication within it, yet not so numerous as to confuse lines of communication among the regions and from the regions to the central office.

- Use of Existing Facilities

The Department has a heavy investment in existing facilities, including several recently-constructed regional office buildings. The new regional plan should be drawn to permit maximum use of these facilities.

- Use of Existing Districts

The regional boundaries should not disturb old Fish and Wildlife, Lands and Forests, and Health district boundaries. Also, the new regions should be balanced between old Conservation and Health districts.

- Contiguous Planning Areas

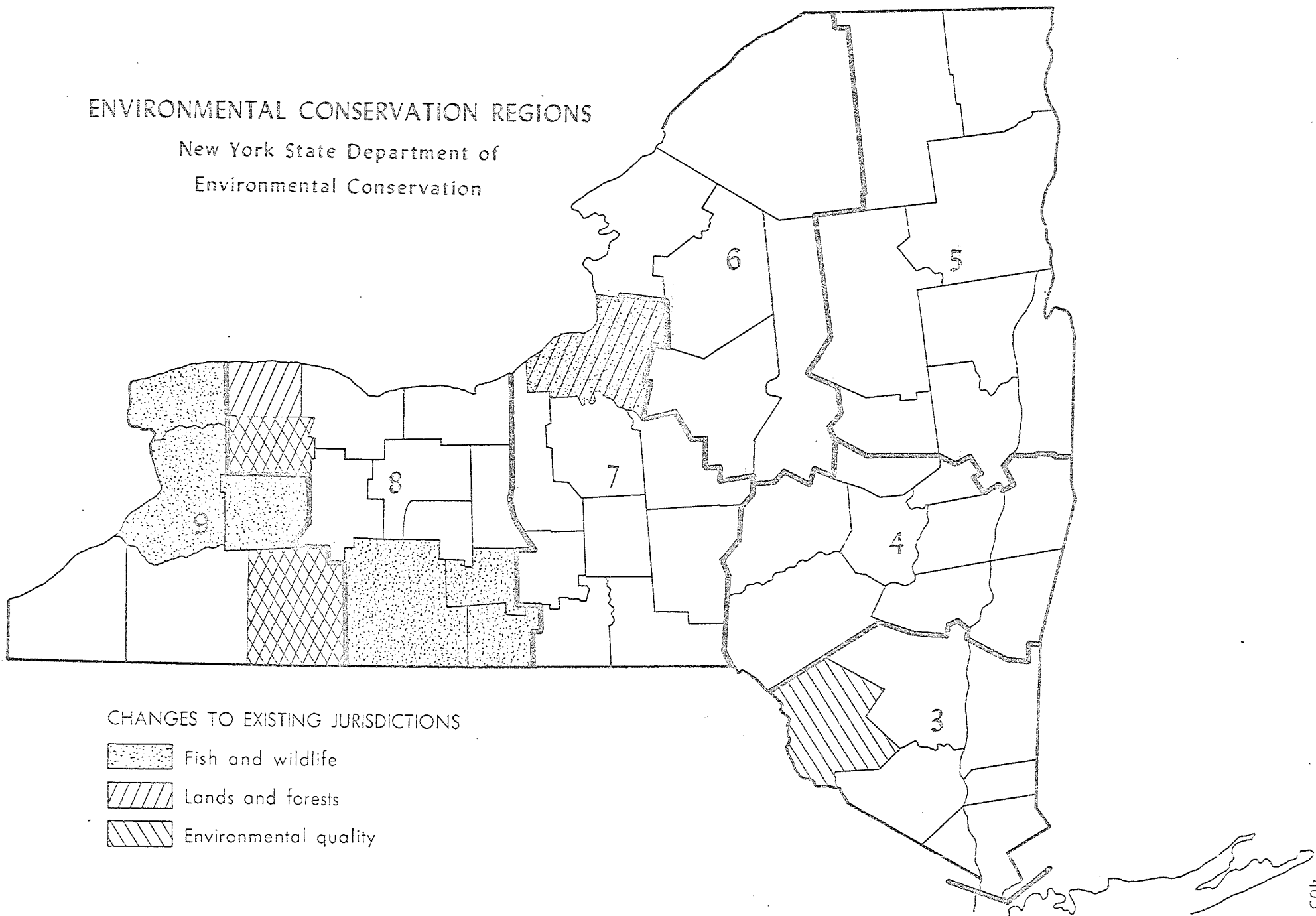
Each region should not divide contiguous planning areas, i.e. areas with similar geographic, economic, and population characteristics. For instance, urban areas should not be divided into separate regions.

To create the nine new regions, it was necessary to cut across existing field districts or regions in several areas.

The map on the next page shows the former Fish and Wildlife Regions, Environmental Quality regional offices, and Lands and Forests Districts related to the new consolidated regional alignment.

ENVIRONMENTAL CONSERVATION REGIONS

New York State Department of
Environmental Conservation



Boards

During reorganization efforts, the various state boards concerned with the environment were consolidated and brought under the DEC umbrella. At the present, the DEC Commissioner chairs these boards. Below is a brief explanation of the boards' functions:

A. Environmental Facilities Corporation

The Environmental Facilities Corporation is attached to the DEC for administrative purposes. This unit is a public benefit corporation with authority to construct and maintain treatment and disposal facilities for both liquid and solid wastes, and air pollutants. It is concerned, however, only with municipal wastes, and has no authority over industrial wastes except when these are discharged into municipal systems. It is a self-financing corporation through general-obligation bonds.

B. State Environmental Board

Prior to reorganization, New York had a Water Resources Board, Air Pollution Board, Pesticides Board, and Natural Beauty Board; each of these boards were composed of citizens and agency personnel, whose membership did not significantly change from board to board. These Boards played a policy or standard setting role. Then, before reorganization, they were merged into a single Environmental Board which presently sets standards for DEC.

This State Environmental Board is a part-time, 15-man board attached to DEC and chaired by its Commissioner which meets approximately once a quarter. The Board has an interagency and citizen composition consisting of the Commissioners of Health (Vice-chairman), Agriculture and Markets, Commerce, Transportation, the Office of Parks and Recreation and the Office for Local Government in the Executive Department, the chairman of the Public Service Commission, the Industrial Commissioner, and six citizen members appointed by

the Governor for staggered six-year terms. Of these private members, the Act states that:

"One shall be representative of conservationists of the state and shall be familiar with matters pertaining to the utilization of the natural resources of the state, one shall be representative of industry and as such shall be employed by a manufacturer or public utility, and four shall be from the fields of public health, natural sciences, agriculture, urban studies or other disciplines relating to the environment, ecology or natural resource management."²⁰

The statutory role of the Board is to assist the Commissioner in reviewing the policies, plans and programs of other state agencies affecting the environment, approve all standards and regulations recommended by the DEC Commissioner, and "serve as a working forum for the exchange of views, concerns, ideas, information and recommendations relating to the quality of the environment."²¹ The actual role of the Board in relation to the DEC is an evolving and as yet unclear one.

If nothing else, its role is a unique one among states due to the Board's partial interagency membership and because its powers are less and less specifically defined than in those states whose boards are really meant to be "governing" ones. Another issue is the evolution of the Board's role in reviewing and approving pollution standards proposed by the Commissioner. By the reorganization statute, it is entitled to the role of approving "each environmental standard, criterion and rule and regulation having the effect thereof".²² As a matter of practical policy, the Commissioner would like to apply this only to significant new, and broad, regulatory decisions and criteria, such as a decision to move into a new environmental area or regulate a new pollutant, to set criteria for noise pollution controls, or alter the stream classification system. He feels that the up-grading or broadening of existing standards, covering

specific water or air pollutants, should rest in the Department's hands. Since the 1970 statute transfers powers of the Commissioners of Conservation, Health, and Agriculture and Markets directly to the DEC Commissioner, and specifically states that they should be in no way diminished, there is a legal "escape clause" for this view. The recent pesticides regulations proposed by the Department provided a good test case. These were not submitted to the Board for approval, and thus far the Board has not requested to review them.

Perhaps the greatest value of the Board is that it allows some citizen input, gets agency personnel communicating on basic issues, and frees the DEC from a standard setting role.

C. State Natural and Historic Preserve Trust

If the state acquires lands for historic purposes, these lands receive the same treatment as other parks and have the potential to receive funding. (This board is primarily a legislative tool.)

The Regulatory Process

The Department of Environmental Conservation is responsible for initiating the standard-setting process with respect to all air, water and land pollutants, including but not limited to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids. This includes standards regulating the storage, handling and transport of solids, liquids and gases which may cause or contribute to pollution. The Department also has responsibility for regulation methods of "disposal of solid wastes, including domestic and industrial refuse, junk cars, litter and debris consistent with sound health, scenic, environmental quality, and land use practices."²⁴

In this capacity, the Commissioner and his staff, "with the advice and approval of the Board, may adopt, amend or repeal environmental standards,

criteria and those rules and regulations having force and effects of standards and criteria."²⁵ The Commissioner must hold public hearings on each proposed standard or regulation, in which Board members may participate. The 1970 statute requires that all proposed standards must then be submitted to the Board for formal approval. A majority vote, with at least ten members present, constitutes approval or veto. The Act states:

"The board shall tender in writing such approval or a denial of approval sixty days after receipt of a full statement of such submitted matter. Failure of the board to so act within such sixty-day period shall be deemed approval by it of such environmental standard, criterion, rule or regulation or change thereto. If the board refuses to approve the submitted matter, the commissioner shall not act contrary to such denial."

As pointed out in the previous discussion of the Environmental Board, the actual role of the Board in the standard-setting process is uncertain and minimal as yet and its authority to approve standards is its only non-advisory responsibility. By more or less mutual consent of the Board and Commissioner, its involvement may be limited to broader regulatory issues.

Standards become effective within thirty days after they are published. Most of the Department's Division of Legal Services is in the process of recodifying these.

According to the law, the Department may enter and inspect property to investigate "either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or non-compliance with a law, rule or regulation." Public complaints are also investigated. A polluter is notified by the Department's Division of Legal Services of its specific violations, and a conference is scheduled to establish an abatement time-

table. The Department may subpoena witnesses and evidence. If the polluter does not agree to the timetable or does not carry out abatement as scheduled, or if the Department decides on another course of action, formal legal action is initiated. This includes a scheduled formal public hearing after a notice and complaint is served. This may also result in the issuance of an order containing an abatement schedule. If the Department seeks litigation, it must refer the case to the Attorney General, who handles all prosecutions. The DEC is completely dependent on the Attorney General to carry out all court actions. For this reason many state environmental agencies have preferred to handle cases out of court through orders of variances which the Department can control. For instance, a new system to deal with polluters has been developed in the field-- the pollutor signs an order containing an abatement schedule and then purchases a bond to ensure adherence to this schedule. This conserves a lot of time and money. Department officials in New York have complained of the slowness and uncertainty of the litigation process there, except prior to the 1970 elections when the Attorney General not only acted promptly but actually initiated some cases on his own without the Department's knowledge. At the present time fines for polluters are set by statute.

The Commissioner has not yet used his emergency powers to order an immediate halt to discharges considered critical to health and resources. Since this is an entirely new power and a highly political one, caution will be exercised in choosing the situation of its first use.

A Permit Authority now exists in DEC. Applications are submitted to the Authority which routes them through various internal DEC divisions and approves or disapproves them based on subsequent recommendations.

At this time, according to Stanley Legg, a one-stop permit is not available.

However, regions do conduct a single hearing for all permits and impact statements (although the statutory authority to do this is insufficient), and they have established permit clearinghouses where an applicant is shown all the permits necessary for the approval of his project. Additionally, regions are attempting to combine certain permits; for example, one burning permit for Lands and Forests and Air Resources. At another level, DEC is endeavoring to strengthen Environmental Analysis activities.

Environmental Review and
Impact Statements

Even though development may be controlled by public regulation and influenced through placement of public facilities, such means are often too limited in scope, or are administered too unevenly, or occur too late in the decision-making process to prevent unforeseen negative environmental consequences. As a recognition of these problems at the federal level, Congress passed and President Nixon signed the National Environmental Policy Act of 1969 (NEPA). Among other provisions of NEPA is Section 102(2)c, which provides that any federal agency proposing to take an action which may have a significant impact upon the environment will prepare an environmental statement discussing possible impacts and alternatives showing why the proposed action is preferred. Such statements are then reviewable by other levels of government and the general public. Ideally, such review should come early enough in the development's stage that environmentally unsound actions may be avoided.

New York State participates in the review of these federal actions under NEPA. In addition, under Circular A-95 from the federal Office of Management and Budget, a large number of federal projects and grants-in-aid are subject to early notification of intent to local agencies through state and regional clearinghouses. While the comments resulting from these review processes

are recommendatory rather than prohibitory they, nevertheless, may have substantial effect in assuring that development occurs in a more environmentally sensitive manner.

Although New York does not require state environmental impact statements, the Department of Environmental Conservation works closely with agencies such as the Department of Transportation and the Public Service Commission on review of projects under their jurisdiction. In addition, the annual state capital budget process now includes the approval of state agency projects by D.E.C. However, the real issue surrounding state environmental impact statements is manpower and DEC's lack of it. Under various environmental quality regulations, the Department of Environmental Conservation also has an opportunity to review certain proposed public and private projects for which permits must be granted by the state. In the past, much of this review was done only with respect to the environmental elements of the project which required these authorizations. However, such review is now done in comprehensive fashion looking at all aspects of the project from the point of its environmental impact.

The project review process must first be concerned with protection of public health and safety, and other environmental consequences. But such review also has a secondary benefit to the developers in that it often reveals alternatives which are both environmentally and economically more desirable. It is important to set up such a review system so that it occurs early enough in the planning stages to allow for selection of alternatives and necessary design changes. It is also highly desirable that the review time be reduced providing for simultaneous involvement by all interested levels of government.

The New York State Environmental Plan, Prehearing Draft, Nov. 22, 1972, recommends that Federal, State and local government levels, develop review procedures that will promote both public and private environmental accountability

and will assure that all sponsors of actions or projects having significant impact upon the environment make public disclosure of such impacts as a means of determining the level of environmental control which must be applied; voluntary self-regulation is encouraged.

In order to implement this recommendation, the report suggests that objectives must be pursued at all levels of government and the private level as well. These include:

Federal level -

- Expand and improve the environmental review process established under section 204 of the National Environmental Policy Act of 1969.

Provide improved public accessibility to the Environmental Statements. Provide more uniformity among Federal agencies in preparation of reports and in review procedures.

Provide more explicit uniform guidelines to Federal agencies on treatment of matters of environmental concern.

Adopt "early alert" or sequential review process wherever possible, emphasizing early discussion of alternatives.

- Limit or withhold Federal investment in all projects or actions until critical environmental problems have been resolved.

State level -

- Through the Office of Environmental Analysis in the Department of Environmental Conservation, develop a state system of environmental review which may be broadened in application as needed and as trained manpower can be provided.

Review all projects on basis of specific regulatory and permit granting responsibilities of D.E.C.

Review all state agency capital projects as part of annual budget review process.

Prepare coordinated state agencies' response to Federal impact statements prepared under NEPA.

Review all state agency actions, including financial aid to others, which may have significant impact upon the environment.

Require state environmental review of any proposed development on identified environmentally critical or unique areas throughout the state.

- .Recognizing the differences in degree and scope of concerns among various levels of government, foster a system of local, county and regional review of environmental impacts which may obviate the need for detailed review at State level.
- .Provide as much state agency field unit input into State environmental review processes as possible in order to better reflect local considerations.
- .Provide a process of environmental analysis at state level which minimizes duplicative review and is scaled to the size, complexity and degree of environmental significance of the project; integrate such state review with state/local O.M.B. Circular A-95 project notification and review system.
- .Encourage systems of "early alert" at local level and require early project notification procedures among state agencies.
- .Establish uniform guidelines with respect both to state environmental review procedures and to required review information.
- .Provide state assistance in the development of local guidelines for review which
 - Clarify extent and level of environmental concerns between governments.
 - Define critical or unique areas of environmental concern.
 - Acknowledge sequential concerns ranging from during-construction impacts to impacts related to facility maintenance and operations.
- .Provide assistance to local governments in making their environmental analysis through services of state, federal and academic environmental expertise; train local personnel for environmental review work.

Local level -

- .Establish local, county and regional environmental review or in lieu, delegation of environmental accountability to next higher level of government, when state funds or approval are involved with local govern-

ment actions, or where local proposals may affect state-recognized environmentally critical or unique areas.

.Provide that local, county and regional environmental review is consistent with adopted development policies at respective levels of government.

Private level --

.Involvement of private developers in environmental impact analyses at early stage of projects will provide design savings at beginning and reduce review delays at later stages.

.Encourage, and in the case of government-insured loans, require lending institutions to acknowledge environmental impact analyses made for developments which they are financing, and justify their decisions in the case of adverse impacts.

Environmental impact review costs for privately sponsored development should be borne by the project proponents; public agencies should establish fees to cover such review.²⁶

Interagency Relations

A. Local Administrative Units:

Of special interest is the role of local health units. Prior to reorganization, such units (e.g., city health departments) were financed for environmental programs directly by the Health Department. The state as a whole paid for over 50% of all local health unit activities. Because a well-established working relationship existed with the State Health Department, local agencies had a great deal of autonomy in both the proposing and implementing of projects. Typically these were undertaken in response not only to local problems but also to purely local political situations.

As of April, 1971, the Department of Environmental Conservation assumed responsibility for most of the Health Department's environmental financing to localities (i.e. continued to pay for 50% of environmental expenses) and assumed a large degree of activity initiative and control. The Department's plans to accomplish this were part of its broader plans for regionalization of environmental programs. The regional administrative offices support staff to oversee local action, including enforcement actions, and may even supplant their own staff in local positions.²⁷

Other local administrative units such as towns and counties are directed by law to report to DEC the estimated environmental impact of any roads which they construct; unfortunately, it is almost impossible for DEC to monitor this activity.

B. Other State Agencies

DEC works closely with agencies such as the Department of Transportation and the Public Service Commission on review of projects under their jurisdiction; consequently, DEC influences the location of highways, power plants, and the formulation of agricultural programs. In addition to DEC's permit granting and environmental impact review authority, the annual state capital budget process now includes DEC's approval of state agency capital improvement projects.

Due to ad hoc relations with the Commerce Department, few economic versus environmental trade-offs are consciously made.

Perhaps the Department will encourage environmental considerations in other agencies through the formation of their environmental plan.

PROBLEMS ENCOUNTERED BY DEC

The following problems which were encountered by DEC personnel reorganization became apparent during interviews with DEC's deputy commissioners:

- (1) Reorganization came during a period of austerity in state government; consequently, few funds were available for the new department.
- (2) Too much fanfare was given to the pollution control aspect of DEC; the Commissioner paid little attention to Management which felt it was being usurped by Quality efforts.
- (3) DEC had to break the traditional isolation of state government and gain public support.
- (4) Problems with the boundaries of regions have arisen; as it turns out, some planning areas should have been included in other regions and Regions 1 & 2 (New York City and Long Island) should have been combined into one region.
- (5) Field personnel are reporting to program personnel (old Health and Conservation men) instead of reporting to their regional superiors.
(Lawrence finds this situation convenient, Legg finds it disruptive.)
- (6) Not all environmental programs have been regionalized, i.e. pesticides.
- (7) DEC has weak administration and newly initiated regional operations with large, powerful program units which have been transferred in toto to DEC without significant change.
- (8) Due to the fact that Environmental Management & Environmental Quality have not been subject to large-scale internal reorganization, they tend to remain separate entities with coordination only occurring at the Commissioner's level. Consequently, overlapping responsibilities exist, especially in the field of water management and control.
- (9) There are too many Deputy Commissioners.

- (10) The State Planning Agency of New York, due to budget cuts, no longer plays a major role in agency planning; this hinders the integration of DEC plans with overall state objectives.
- (11) No formal citizen access exists; the only grievance mechanism available is the court system through which citizen can take action against a capricious act of the government; the procedure by which a decision was arrived at is judged, not the actual standards. This process is costly both in terms of time and money.
- (12) No conscious trade-offs between economic development and the environment are made.
- (13) DEC does not have full statutory authority to hold one hearing for all permits required of an applicant.
- (14) DEC does not have a one-stop permit system developed yet.
- (15) Planning and Research has taken a secondary position during reorganization and the idea of a top-level planning group has never gotten off the ground. Consequently, long-range planning is not being accomplished and research efforts are scattered.
- (16) To what extent can the new agency go beyond the specific grant of powers in reviewing permit applications -- consider not only physical but aesthetic effects of proposed projects?
- (17) Although a comprehensive planning document with individually detailed plans for each region was attempted, the final result appears to be a general policy statement without specific guidelines.
- (18) DEC needs to develop better communications between its legal staff and the Attorney General.

SUGGESTIONS FOR MINNESOTA

- (1) The director of the new agency should provide strong leadership during the reorganization process and a positive public image.
- (2) Give the new organization an identity, i.e. create a logo and publicize the actions of the agency; for public support is extremely critical during the first stages of the reorganization process.
- (3) Have management and quality in the same department; this facilitates better communication, more personal contacts, and better control over comprehensive environmental matters. It also saves money; it was estimated that the creation of DEC saved the state of New York \$3 million (the difference between the DEC budget and comparable departmental budgets).
- (4) Utilize the expertise of the U.S. Forest Service to deal with regionalization problems.
- (5) Create a Task Force to determine which regional boundaries coincide with conditions in Minnesota and to establish a regional organization compatible with existing structures (see criteria for the establishment of regions.)
- (6) Have an interim structure which disrupts existing structures as little as possible.
- (7) Place a lawyer in each region and up-grade and train conservation officers.
- (8) After regions are operating and organizational problems have been solved, the job of field services coordinator may be dissolved.
- (9) Have an Environmental Analysis section in charge of permits and impact statements.
- (10) The ideal organization is a combination of professionals at the program level and a pool of laborers, technicians, and law enforcement officers at the regional level.

- (11) It should be decided from the outset what the role of the new agency will be, i.e. an advocate for the environment or a balancer of different interests.
- (12) Review the purposes and output of existing environmental boards; then consolidate or dissolve them where waste exists and attach the newly revised boards to the new environmental agency.
- (13) Pedersen, first deputy commissioner, felt that the new agency is the logical place for the initiation of land-use planning.
- (14) Biggane, executive deputy commissioner, suggested that the Environmental Hearings Board should be a division within the new agency with its members separate from the normal operations.
- (15) Regions should plan while staying within state environmental guidelines. Telex machines are used in all regional offices for instantaneous communication with the central office.
- (16) Require the director of the new agency to file monthly status reports with the Governor.
- (17) Biggane stated he would prefer a legal staff which would be authorized to handle the enforcement of all environmental regulations including court proceedings.
- (18) Utilize the review system for impact statements which New York devised.
- (19) Irwin King, executive assistant to the Commissioner, felt the key to a successful reorganization was the placement of people with both administrative talents and the ability to handle strong political pressures in crucial positions.
- (20) New York's legislation is an excellent model from which to draft similar legislation for Minnesota.

DATE: November 27, 1972
INTERVIEWERS: Vic Arnold, Cynthia Whiteford, Harold Sheff
NAME: Irwin King
TITLE: Executive Assistant to Commissioner
ADDRESS: 50 Wolf Road, Albany
TELEPHONE: 457-1018
FUNCTION: Charge public relations, etc.

SUMMARY:

- 1) Backgrounds:
 - a) Diamond, attorney, associate of Gov. Rockefeller, member Park Commission, active in environmental matters in New York for approximately 15 years. Little known by general public but respected and well-known in the trade. Worked actively for reorganization before designated as Commissioner. Diamond close friend of number two man in DEC, James Biggane. Diamond has the reputation as a very able and very tough administrator.
 - b) Biggane, been in State government for many years, last of top people in old Conservation Department. Biggane now Exec. Deputy Commissioner to Diamond. Biggane's job is to run DEC in Diamond's absence.
 - c) Stan Legg, Deputy Commissioner for Field Services. Legg has long experience in State Government mainly in budget areas. Has reputation as an organizer, efficiency expert, and top notch administrator.
 - d) Ronald Pedersen, First Deputy Commissioner - Pedersen was on Governor's staff prior to coming to DEC. While on staff activities centered around environmental concerns. Was one of the people who worked on DEC organization in Governor's office. Present duties involve planning and administration, backup man to Biggane and Diamond.
- 2) Political background to DEC - Governor's Office did all the work. In 1969 presented Legislature with a finished product. Governor's office very low profile - cards were already played before people even knew they were in the game.
- 3) King feels reorganization has been as successful as could be expected. Feels the key to success is in selection of the right people. People with administrative talents but also able to handle strong political pressures.

DATE: November 27, 1972
INTERVIEWERS: Cynthia Whiteford, Harold Sheff, Vic Arnold
NAME: James Biggane
TITLE: Executive Deputy Commissioner
ADDRESS: 50 Wolf Road, Albany, New York
TELEPHONE: 457-1018
FUNCTION: In charge of various deputy directors in main office, Albany. Mr. Biggane is Commissioner Diamond's first assistant; and as such is in charge of the Department in the Commissioner's absence.

SUMMARY:

1. Before DEC, New York faced uncoordinated programs in various existing Departments, especially in Water. Governor's office did all of the major work for reorganization legislation. There are no existing public documents, once bill ready little opposition was conservation groups. Biggane feels an even stronger bill could be passed today -- reason legislature has a great deal of confidence in DEC. Diamond was an associate of the Governor.
2. Permit Authority now exists in DEC. Function is to act as a clearinghouse. Applications submitted to Authority which routes it through various internal DEC divisions and based on recommendations approves or disapproves. Major problems (impasses) are referred to Commissioner for decision. Program people complain of slow downs, etc. associated with permit process -- Biggane feels just fear of invasions of territories.
3. Central Program Planning unit exists in the Commissioner's office; Biggane sees it as a central clearinghouse for planning down at division level as well as at the regional level. So far Water is only division with full-scale planning capability.
4. Division of Parks and Receptions run by Robert Moses was formerly in Conservation, but due to great power of Moses was left out of DEC and placed in Governor's Office. Moses has left, new Commissioner appointed in 1972. Biggane looks to see Division to be placed in DEC in near future.
5. Governor Rockefeller played major role in establishment of DEC, but remains basically pro-economic. Biggane feels reorganization is the solution to problems facing Minnesota. Feels time to drop outdated programs is at the same time that you reorganize.
6. Environmental Impact Statements are not required at state level, do coordinate Federal impact statements, but the real issue is always manpower. Budget Department does require all major improvements sponsored by other agencies to be cleared first with DEC.
7. Present operations are conducted on Regional levels. Regions are basically State Planning Regions with minor adjustments. (9) Regional Directors report to Deputy Director Legg -- Regions cover both Quality and Management.

8. Biggane feels basic rationale for DEC is (1) Environmental (2) Efficiency and (3) increased public support for new combined agency. i.e. recently passed 1+ billion dollar bond issue for DEC programs.
9. Budget for 1972 is at 39.6 million which roughly is 3 million less than comparable budget for departments before DEC. (1.6 million actual difference, 3 million results from inflation factors). 1973 proposed budget 44 million, probably get 42 million. Quality budget at 5.5 million, Management at 29 million, Administration at 5.8 million.
10. Regions do plan, but must stay within DEC guidelines. Telex machines are in use in all regional offices, as a result Regional Offices are in almost instantaneous communication with central office in Albany. Cost 34 dollars per month per machine. Biggane sees regions as semi-autonomous operating units. Each region is treated as individual unit, policies are geared to specific region. Selection of Directors especially crucial, must be strong but unbiased people.
11. Looks to go to a Hearings Board type of body but as a division of DEC where members would be separate from normal operations of DEC. New York Court decisions forcing that decision.
12. Monthly reports are filed by Commissioner with the Governor. Contain information on all major activities of DEC. Commissioner requires divisions to file similar reports with him.
13. Feels need very strong and able leadership at the top - must be politically astute to survive during the first few years. Dead weight from old departments will have to be carried until power of DEC increased to a point greater than power of the particular individuals.
14. House legal staff does all administration work, including enforcement of regulations. However the Atty. General's office must be called in whenever DEC is in Court. Biggane would prefer own legal staff handling all legal work.

DATE: November 28, 1972
INTERVIEWERS: Harold Sheff, Vic Arnold, Cynthia Whiteford
NAME: Ronald Pedersen
TITLE: First Deputy Commissioner
ADDRESS: Department Environmental Conservation
50 Wolf Road, Albany, New York
FUNCTION: Second Assistant to Commissioner of DEC, charge of planning, etc.

SUMMARY:

1. Basic issue DEC has faced is what is the role of DEC, is it an advocate for environment or a balancer of different interests, both environmental, economic and etc. This has not been resolved as yet, the role played has been a changing one depending upon the issue.
2. State Planning Agency of New York, due to budget cuts, no longer plays a major role in agency planning, at best it can keep close track on only major agency actions.
3. DEC has been faced with issue of "how far can you go beyond the specific grant of powers in reviewing permit applications." For instance can you turn down a water supply permit for only "traditional" water reasons or can you also use aesthetic or unquantifiable reasons. DEC has turned down a water permit -- based on aesthetic reasons this Nov. Issue has not been resolved yet.
4. Environmental Board -- New York used to have four Boards; Water Resources, Air Pollution Control, Pesticides and Natural Beauty. Each Board was composed of agency types and citizens. The Boards played a policy or standard setting role. All had about the same Agency people on them. DEC came into being after all the Boards were merged into a single Environmental Board that basically sets standards for DEC. Present makeup is nine agency heads and seven citizens. DEC view has been to take as little as possible to the Board in way of standard setting. The Board generally meets the minimum four times a year. Note that most standards were already existing and just carried over into DEC. Value of the Board is that it allows some citizen input, gets agency people communicating on basic issues, and frees the DEC from a standard setting and enforcement role.
5. So far the DEC has not been completely successful in balancing the roles of the Quality and Management Divisions. Diamond has been accused of being all Quality. However, Management does have four times more money and five times more personnel. Pedersen feels part of problem lies in the fact that Quality type of activities are highly visible and sensational while Management activities are of a low profile type.
6. Conservation Council is a statewide federation of hunters and fishers who regularly accuse the DEC of neglect. This group was one of the early opponents of reorganization also. Basic reason for the continuing attitude seems to be due to loss of power over old Conservation Department programs.

7. The two basic reasons for reorganization were:
 - 1) Conservation Department was too clientele-oriented.
 - 2) Health Department was forced to focus the bulk of its manpower and resources on pollution activities, especially waste water treatment plants. As a result, prople area functions were being neglected.
8. Actual planning for DEC was all done in the Governor's office. This started to focus @ 1967, with plan going to Legislature in 1969. The activity was never visible, there were no task forces, etc., or trial balloons.
9. It was only after the creation of the DEC that actual organization issues came up. A task force composed of Diamond, Budget Department, and key people in Health and Conservation was organized. The basic reason for the continuing use of Quality (Health) and Management (Conservation) was that the bill passed in April with effective date of July 1, which gave only 3 months to get going. Another reason was it was an election year and no one wished to risk a lapse in the services presently being provided by Conservation or Health.
10. Gradually the DEC has been moving towards having Policy decisions, and support activities centralized at Albany with operational activities located out of the nine regional offices. There have been some difficulties in determining where to locate various planning activities. At the present time, water planning is done in Management much to the dislike of Quality. A top-level planning group is envisioned but it really has never gotten off the ground.
11. Comprehensive Planning to date has been done in great detail, with an attempt to plan individually for the regions, however the final result appears to be a general policy document without the detail -- i.e. guidelines. The DEC is also preparing a policy manual for use by the regional offices, it will contain the basic operating procedures of the agency -- point is to give direction to field activities.
12. Quality Services is catch-all for the Quality Division. It is here that new programs originate. Once a program reaches a certain point it would be transferred out into a division of its own, i.e. like Air or Water.
13. Thinks DEC is place for land use, but senses same problems due to comprehensive nature of land-use controls.

DATE: November 27, 1972
 INTERVIEWERS: Vic Arnold, Cynthia Whiteford, Harold Sheff
 NAME: W. Mason Lawrence
 TITLE: Deputy Commissioner of Environmental Management
 ADDRESS: Department of Environmental Conservation
 50 Wolf Road, Albany, New York
 PHONE:
 FUNCTION: Coordinates and directs resource preservation and management in the Department of Environmental Conservation (DEC); main responsibility is the water management program.

SUMMARY:

1. Background on Lawrence: Among the deputies in DEC, Lawrence has the longest tenure and experience in state government; he has promoted reorganization for over 20 years.
2. Management is a misnomer -- he didn't explain this statement.
3. Planning: overall departmental planning done in Planning and Research which reports to Ronald W. Pedersen; within Environmental Management there exists Water Management Planning (general water resources and quality management) which is larger than the departmental planning section; in addition, there exists divisional planning along functional lines; the state plan will be a dynamic plan containing regional plans.
4. Problems with reorganization plan: management and quality separate themselves.
5. Benefits of reorganization: (a) since management and quality are in the same department, there is better communication, more personal contacts, and better control over environmental matters, fires, for example; (b) since people with broad experience in the field, good rapport between program people in management and operational people at the regional level; potentially, staff people could be very autonomous and there could be nine different policies in the state (9 regions set-up); (c) forces programs to be dealt with at the regional level.
6. Decentralized organization: Environmental Management Staff - Programming
 Operational Regions - Operations
 Program people have liaison with the regions in order to review and evaluation programs, regional programs have to be formally approved by Environmental Management; the regional director is critical to operations, directors should be administrators, not specialists who favor one management area over another, directors are appointed (3/4 were professional, 1/4 were political appointments); noncontroversial decisions or issues are usually handled at the regional level, controversial decisions are made by staff who have the authority to hold hearings.

7. No trade-offs between economic development and the environment are made consciously; they try to get all relevant evidence before making a decision; they have a judicial type of hearing to weigh all the factors; they are conscious of the fact that their decisions may be taken to court.
8. Interagency Relations: relations are ad hoc with Commerce Department, more formal relations with transportation (submit all road plans), DEC has the power to recommend to transportation, compatible people make Fish and Wildlife and Forest work together (no formal agreements), also, it is law that when towns and counties build roads, they are supposed to report the environmental impact of these roads.
9. Citizen Access: Article 78 --- aggrieved citizen action against capricious governmental action, the procedure by which a decision was arrived at is judged, not the actual standards.
10. Permits: One step permit authority in "house" will have one hearing for all permits and for the impact statement (not complete statutory back-up to do this).

DATE: November 28, 1972
 INTERVIEWERS: Vic Arnold, Cynthia Whiteford, Harold Sheff
 NAME: Stanley Legg
 TITLE: Deputy Commissioner of Field Services
 ADDRESS: Department of Environmental Conservation
 50 Wolf Road, Albany, New York
 PHONE:
 FUNCTION: Coordinates the administration of regions.

SUMMARY:

1. Background to reorganization: (a) Bureau of the Budget created a study team to develop guidelines for implementation of reorganization, did this after the decision to reorganize was made; (b) the U.S. Forest Service helped because they were familiar with the administration and problems of regionalism; (c) a strong county health program existed, still have part of it in DEC programs; (d) the old Conservation Department and Department of Health used to work separately, wasteful of manpower.
2. Explanation of division duties:
 - (a) Water Management Planning -- Originally, its major programming was done through an interagency commission (staff furnished by the old Conservation Department) and regional commissions were to be set-up. However, it was all planning and no implementation except quality sewage treatment, in this case, plants were being built which did not fit regional plans. Conflicts arose -- how relate implementation to planning process? When placed in DEC, it underwent a severe budget cut, now has little political power.
 - (b) Fish and Wildlife -- heavy political lobby.
 - (c) Marine and Coastal Resources -- actually on Region 1, Lawrence manages this by himself.
 - (d) General Engineering -- should be in field services.
 - (e) Water Management -- flood control, inherited from the Department of Transportation, a lot ties in with water planning; not a planning unit; all in field but not regionalized.
 - (f) Water Regulation -- hearing officers; if a bed or bank of a stream is disturbed, it is under their jurisdiction, water supply is also under their jurisdiction (purity is in health), a stream protection permit can be used to open substantial environmental hearing.
 - (g) Mineral Resources -- oil and gas regulations in western part of the state.
 - (h) Real Property -- property acquisition.
 - (i) Pure Waters -- enforcement.
 - (j) Ecological Standards -- a couple of labs whose main concern is sampling fish kills to find the cause of death, overlap with Pure Waters. Interested in toxic materials as they affect fish and wildlife. Should be in Planning and Research.
 - (k) There are plans to strengthen the administration to help with the reorganization in Quality and Management.

3. Permits: One stop permit is fiction --- getting close to this in Environmental Analysis and in regions where there is a permit clearinghouse (shown all permits, not just one); in process of making just one burning permit for Lands and Forests and Air Resources.
4. Problems: Management thought it would be usurped by Quality, especially when the Commissioner did not pay enough attention to it: (a) all thought the DEC was completely pollution-oriented; (b) had to break the isolation of the past; (c) had to live in a period of austerity, a problem when reorganizing.
5. Establishment of Regions: A task force from the Division of Budget and General Services, DEC people, and two consultants. The Commissioner gave them 6 months to make a study of DEC for the development of a field structure (Report in Appendix). Used following criteria:
 - (a) Had to use the regions established by the governor or explain why couldn't.
 - (b) Balanced regions -- both management and quality wise.
 - (c) Large enough to support a regional director.
 - (d) Not so large that unwieldy.
 - (e) Tried to combine old districts.
 - (f) Tried to keep contiguous planning areas together (i.e. similar geography, economics, and population).
6. Field Units:
 - (a) Historically, enforcement was done by the game wardens, now conservation officers, in Fish and Wildlife. (These were highly political jobs); now these jobs have been broadened to operate across program;
 - (b) A lawyer has been placed in each region, this has worked well because the attorney is not a heavy administrator and helps the officers in their work;
 - (c) Wardens have been upgraded and given 4 weeks training at a police academy. He may serve on violations, is a "leg" man for the attorney, and makes inspections and testifies;
 - (d) Many times instead of a hearing, the polluter may sign an order and take bonds in the field;
 - (e) The original field operations of conservation and health have not been unduly changed in the current operation; Legg stressed the fact that DEC and the regions are in an interim period.
 - (f) In Regions 1 and 2 (New York City and Long Island), DEC just reviews programs and gives the city and county state aid to administer them.
 - (g) Main purpose for regions: to administrate programs, report back about how effectively the programs meet goals, and input information.
7. Goals for Field Units:
 - (a) Regional directors have to start to get Fish and Wildlife personnel to be his staff and not program peoples' staff.
 - (b) Start to regulate flood control, stream improvement, land acquisition.
 - (c) Take in Fish and Wildlife and Lands and Forests -- identify and organize about a unit to maintain equipment and facilities, i.e. set up operations unit under Land and Forests.

8. Community Affairs: Not worked too well; Community Management Councils could be established by towns, villages, cities, counties by statute, also a town can join with a county; can't do much more than coordinate these councils; hard time developing capacity on its own; it works with local conditions.
9. Environmental Analysis: ultimately in charge of permits and impact statements (federal requirements for A-95 review).
10. Pesticides are not regionalized but will be in regional unit soon.
11. Ideal Organization: Resource Management Unit -- a combination of professionals, biologists for example; Operations -- maintenance, laborers and technicians, rangers doing law enforcement.
12. Planning: three stages
 - (a) Long-range -- done in Planning and Research;
 - (b) Program planning -- done in Environmental Quality and Management;
 - (c) Implementation -- done at regional level, theoretically there should be feedback from here to the other two stages, but there presently exists no mechanism for this and the regions do no planning themselves.

A statewide environmental plan is being drafted by Ron Pedersen. Planning done by region, but the goals are overall.
13. Legg's job: He is responsible for everything in field; he has 4 people in the office; he believes you need a mechanism like field services in the beginning of reorganization, but feels the job could be eliminated later if all goes well; the problem is how much authority should he possess; everything does not have to go through field services, it can go to the counterpart in programming if the regional director is informed; Legg feels there is too much administration from program people in Albany. Other personnel in Field Services: Director -- develops operation units; Ass't. Director -- quality administration problems.
14. Budget Process: Starting last year, the regional offices make a budget request for field and prepare it based on program guidelines from the appropriate division; the total budget is submitted to field services and the pieces go to program people; program and field make recommendations which go to the commissioner if there are conflicts; the commissioner has the top 4 line offices to evaluate budgets. Since there was not a good base by which to determine what resources were being spent in the field, personnel devised time reports in order to sharpen the budget.
15. It is not clear what role DEC will play in land-use planning.
16. Research efforts are widely scattered; need a strong staff to support it; need better job of collecting information, although highly developed monitoring system.

17. Regional Directors: Couldn't afford assistant directors, but would like them; as director, need a person who people have respect for; usually used people from Fish and Wildlife, quality engineers, people well-known in the area; salaries range from \$26,000 to \$29,000; people in Fish and Wildlife and Quality receive \$30,000.
18. Special Assignments position: legislative liaison, Legg did not recommend that position be kept.
19. Too many deputies.
20. Boards:
 - (a) Environmental Facilities Corporation -- solid waste, i.e. let bonds to municipalities.
 - (b) State Environmental Board -- adopt environmental rules and regulations.
 - (c) Historic Preserve -- legislative, if acquire land for historic purposes, it receives the same treatment as other parks, potential for funding.
21. Communications and Education: all education except Community Assistance; inherited from old Conservation Department; responsible for public news; operates 4 education centers which are available to the general public; working on interpretive angle.
22. How well interface? Continue to assist health department working on local problems; it is all right if health has environmental units, DEC reimburses them 50% and assists them whenever possible; if anything is being done locally it has to be monitored in order to avoid duplication of services.
23. Citizen Access: No formal access; complaints are a good indicator; regional director is always available; only grievance mechanism is the court system.

FOOTNOTES

1. Interview with James Biggane, Executive Deputy Commissioner, New York's Department of Environmental Conservation, on November 27, 1972.
2. New York Legislative Manual, 1972, p. 703.
3. Biggane interview.
4. Laws of New York, Chapter 140, 1970, Article 5, Section 125.
5. Ibid., Section 128 (c).
6. New York Department of Environmental Conservation (DEC), Regional Organization Study, Volume I, Management Report, July, 1971, p. 25.
7. Elizabeth Haskell, Managing the Environment: Nine States Look For New Answers, April, 1971, p. 273-279.
8. DEC, op. cit., p. 11.
9. Ibid., p. 13-14.
10. New York Department of Environmental Conservation, Regional Organization Study, Volume 3, Appendix B, Recommendations Documentation, July 1971, Exhibit B-11-3.
11. Ibid., Exhibit B-14.
12. Ibid., Exhibit B-11-1 to B-11-2.
13. Ibid., B-11-4 to B-11-11.
14. Ibid., B-11-12 to B-11-15.
15. Ibid., B-11-16 to B-11-28.
16. DEC Volume I, op. cit., p. 26.
17. Interview with Stanley Legg, Deputy Commissioner of Field Services of the DEC, on November 28, 1972.
18. DEC Volume I, op. cit., p. 27.
19. DEC Volume II, op. cit., Exhibit B-1-1 plus interview with Stanley Legg.
20. Laws, Chapter 140, Article 4, Section 100.
21. Ibid., Section 103 (1d).
22. Ibid., Article 4, Section 103 (2).
23. Ibid., Article 4, Section 103 (2).
24. Ibid., Article 2, Section 14 (12).

25. Ibid., Section 15 (1).
26. Department of Environmental Conservation, New York State Environmental Plan, Pre-hearing Draft, November 22, 1972, D-18 to D-22.
27. Haskell, op. cit., p. 287.
28. Laws, Article 4, Section 103 (2).

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- Haskell, Elizabeth, Managing the Environment: Nine States Look For New Answers, Smithsonian Institute, Washington, D.C., April 1972.
- Laws of New York, Chapter 140, 1970, signed by the Governor on April 22, 1970, effective July 1, 1970, creating the Department of Environmental Conservation.
- New York Department of Environmental Conservation, New York State Environmental Plan, Pre-hearing Draft, November 22, 1972.
- New York Department of Environmental Conservation, Regional Organization Study, Volumes I-IV, July 1971.
- New York Legislative Manual, 1972.

CHAPTER XI

THE CASE FOR A FEDERAL DEPARTMENT OF NATURAL RESOURCES

Perspective

The proposal for a federal Department of Natural Resources was announced by President Richard M. Nixon in March, 1971, as part of a substantial governmental reorganization. Three factors influenced this action. First, to a nation disillusioned with the Viet Nam war, inflation and racial issues, Nixon's main source of credibility lay with the environment. Second, the assumed failure of a Democratic Congress to act on a proposal to "make government more responsible" would give political points to Nixon in the coming 1972 elections. Third, two things were perfectly clear about the inefficiency of governmental operations-- it demanded a debilitating amount of a tightened Republican budget, and it reduced the actual influence of the Chief Executive over his Executive departments.

T. H. White, in his description of the proposed changes, expresses the common observation that "(T)he genius of American administration is that it has been able to spawn single purpose agencies that can over-ride all bureaucratic entrapments--but these agencies have been unable to make the transition from emergency to normal operations".¹ Or, more succinctly, the American government operates by that hoary first principle: if something itches, scratch it.

The result has been a multitude of small agencies and departmental divisions, each operating independently, each relating to a specific constituency. The effort needed to co-ordinate their activities in over 850 inter-agency groups has taken excessive time from the policy-making officials; in the ensuing policy vacuum, the actual decisions are made by

the lower level officials. When conflicts arise, the tendency is to avoid the extremely slow bureaucratic process by appealing directly to the White House.

The reorganization proposed by Nixon sought to correct these structural errors by organizing the government around major purposes broadly enough defined to minimize inter-agency contact; this would also bring together related programs, and thus ensure more comprehensive and complete planning. By giving department heads these broad responsibilities and powers, reliance on the White House would be reduced. To complement this centralization of departmental power, Nixon wanted decentralization of the administrative functions.

These goals were given to the President's Advisory Committee on Executive Organization (the Ash Council), headed by Roy L. Ash of Litton Industries. After studying the present structure, it concluded that "The present structure encourages fragmentation when comprehensive responses to social and economic problems are needed. Problems are defined to fit within the limits of organizational authority, resulting in piecemeal approaches to their solutions by separate departments and agencies . . . High-level officials deal with relatively narrow issues and practice 'efficiency in the small,' while their more proper tasks of anticipatory planning and policy formulation, program evaluation and management improvement are attended to on a crisis basis, if at all."²

Major Ash Council memos sent to the President on 12 May 1970 and 19 November 1970 outlined a far-reaching re-organization of the federal government. Nixon called for this re-organization in his State of the Union address on 22 January 1971, but he did not release details for this "new American

revolution" until the memos were published in February. On 25 March, Nixon revealed the full scope of his plan at a joint session of Congress.

The complete proposal involved the consolidation of the 1400-plus domestic programs into four departments--Community Development, Natural Resources, Human Resources, and Economic Affairs. Eight current departments--the Post Office (to become an independent office), Transportation, Labor, Interior, Housing and Urban Development, Commerce, Agriculture (later reinstated) and Health, Education and Welfare-- would thus be assimilated. Figure One shows the nature of the proposed changes.

Opposition arose quickly, even to the more widely accepted Department of Natural Resources (DNR). Administrative efforts were successful in preventing the bills from being widely scattered among many committees for consideration, but the chairmen of the Committees on Governmental Operations, upset at not being consulted beforehand, stated their opposition to the bills. Congressmen were disturbed by the associated restructuring of the powerful committee structure that existed. Special interests opposed disruption of the comfortable relations they had developed with their particular agencies. And the bureaucrats wanted to forestall movement of power from Washington to regional offices.

The new DNR should be considered in the context of the proposal for general governmental re-organization.

Environmental Reform and the Ash Council

The Situation

The need for reorganization of the environmental decision-making process has been recognized since the Brownlow Committee first recommended

Executive Departments under the
President's Departmental Reorganization Program

THE PRESIDENT

DEPARTMENT
OF
STATE

DEPARTMENT
OF
TREASURY

DEPARTMENT
OF
DEFENSE

DEPARTMENT
OF
JUSTICE

DEPARTMENT
OF
AGRICULTURE

DEPARTMENT
OF
COMMUNITY
DEVELOPMENT

DEPARTMENT
OF
NATURAL
RESOURCES

DEPARTMENT
OF
HUMAN
RESOURCES

DEPARTMENT
OF
ECONOMIC
AFFAIRS

Includes the
following
functions:

Urban & Rural
Development
assistance

Housing

Highways & Urban
Mass Transit System

Federal High-Risk
Insurance Programs

Includes the
following
functions:

Land & Recreation

Water Resources

Energy & Mineral
Resources

Marine, Atmospheric
& Terrestrial
Resources &
Technology

Indians & Territories

Includes the
following
functions:

Health Services

Income Mainte-
nance & Security

Education

Manpower

Social &
Rehabilitation
services

Includes the
following
functions:

Domestic &
International
Commerce

Science &
Technology

Labor relations
& Standards

National
Transportation
Systems

Business de-
velopment

Social &
Economic
Information

FIGURE ONE

the establishment of a Department of Natural Resources to President Roosevelt in 1937. The same general problems kept the situation in the 1960's unworkable:

1. Since nature is an integrated whole, management of natural resources cannot logically be separated. For example, forest management involves recreation, timber reserves, water supply, wildlife habitats, and may include mineral excavation. These multiple uses of land involve many agencies.
2. Natural resources programs in the federal government are scattered among four departments and a number of independent offices and commissions---over 80 governmental divisions in all.
3. The scattering of program responsibilities among departments has resulted in a welter of confusion and cross-purposes in policy decisions and in program administration.
4. Conflicts arise between agencies with similar jurisdictions and different orientations. The classic example is the draining of wetlands by the Soil Conservation Service (Agriculture), while the Fish and Wildlife Service (Interior) acquires wetlands to preserve wildlife habitats. Efforts to co-ordinate these agencies have been fruitless, because no-one short of the President has the authority to settle such an issue.
5. These agency conflicts have dissipated energy needed for resource planning.
6. Present divisions have no logical justification. Water agencies are in four departments, yet all attempts to

reorganize to meet the pressing water problems have been politically unfeasible.

7. The Bureau of the Budget (recently named the Office of Management and Budgeting (OMB) is forced by default to act as an arbiter and a co-ordinator between the departments and agencies when it makes recommendations for funding. All resource-related activities are covered by one appropriation even though many separate divisions are concerned.³

The Ash Council

The situation: environmental problems received the conflicting attentions of many agencies, or, worse yet, they fell outside the purview of the existing agencies and received no attention at all. A national policy was simply not possible. Clearly a change was needed, and the Ash Council was asked to construct such a change.

The Ash Council was directed to consider the organization of the executive branch in light of today's changing requirements of government, assessing in particular the size of the federal government as well as the relationships the federal government maintained with the state and local branches of government. In the area of natural resources it sought to:

"*Establish a center of responsibility for developing broad, unified natural resources policy for consideration by the President and the Congress;

*Make possible a more rational balance in planning and managing resources in the light of conflicting demands; and

*Encourage the resolution of most disagreements on resource problems at a department level rather than the White House level, or by having to resort to often inconclusive interagency co-ordinating committees."⁴

Two preliminary recommendations saw the formation of the Council on Environmental Quality (CEQ) on 2 January 1970 and the Environmental Protection Agency (EPA) on 2 December 1970, both by executive order to forestall legislative tampering. The CEQ was envisioned as a consultant to the President on environmental policy, and was later given responsibility for administering the environmental impact statements required by Public Law 91-190, the National Environmental Policy Act; it is a small office, composed of mainly staff positions, although it obtains technical help from the Office of Environmental Quality associated with it. EPA is a large, independent agency, employing over 3,000 people in functional line responsibilities; it is concerned with pollution control and standard setting. A third entity, the National Oceanic and Atmospheric Administration (NOAA), was designed to conduct research on broad environmental questions concerning oceans and the atmosphere; it was placed in the Department of Commerce.

These steps proved insufficient, for the interagency conflicts and overlaps remained. Continued assessment and evaluation resulted in the proposal that environmental programs be consolidated in a federal Department of Natural Resources.

Alternative Structure

Several alternative structures for the proposed department were considered by the Ash Council. The two most interesting ones were the consolidated agency plan and the separate agency plan. The former would bring together all aspects of environmental resources--environmental policy and planning, resource management, and pollution control--into one department; the Environmental Protection Agency in its entirety and portions of the Council on Environmental Quality

would be included in this proposed department. The latter plan would form a department that would be part of a tripartate environmental decision-making mechanism, the other members being the CEQ to determine environmental policy and EPA to continue its efforts to combat pollution.

In considering the first plan, the Ash Council memo was very brief; it acknowledged the more comprehensive planning that would result, yet it rejected the plan rather cursorily by saying "(I)t would, however, subject the standard-setting function to the inherent bias of the department, to the relative disadvantage of other departments with equally important perspectives on the problem."⁵ The plan's potential benefits merit more discussion.

The consolidated agency contains all of the phases of the environmental process, resulting in three major advantages:

1. More integrated, comprehensive planning are made possible by input from all of the phases. This is important when it is realized that pollution is not an independent condition, but rather a result of mis-management; its correction is therefore an integral part of the environmental plan. Similarly, policy and management must contribute their perspectives if the plans are to be efficient and realistic.
2. Greater coordination of environmental activities is achieved due to the interaction required by the planning and implementation process.
3. Conflicts are adjusted within the department, minimizing the energy normally dissipated by internecine interagency conflicts.

The justification for having three separate agencies lies with the "advocacy principle", which postulates that agencies will maintain strict standards by blowing the whistle on laxities of the other agencies; the energy

that must be dissipated in such conflict situations is therefore considered acceptable. Even if this hypothesis is accepted, further argumentation supporting this particular plan seems to rest on its political expediency--it upsets fewer existing apple-carts, and somewhat circumvents arguments that the agency will be too big, too cumbersome to be effective. A third point is that the devision of environmental concerns gives the President greater control over the entire process through his power of appointment in each agency.

In contrast, the scope of the re-organization recommended by the consolidated agency plan might upset enough applecarts to arouse major opposition; in addition, great care would have to be exercised in establishing its organizational framework, for the size of the agency would indeed be substantial. The potential bias in the standard-setting process, which formed the basis for the Ash Council's rejection of the proposal, can be greatly reduced if another body--perhaps the CEQ, acting as an advisory board--were given this responsibility.

The negative aspects of the separate agency plan are, in comparison to the first plan, somewhat a matter of degree. Comprehensive planning is possible only for resource management, for each agency seeks to maximize its own particular goals; for similar reasons, it follows that co-operation, although still as necessary, is not as extensive. Efficiency is thus not as greatly enhanced. The second plan also retains entrenched interests and bureaucracies.

Since the two plans for governmental reorganization combine more of the environmentally related programs into a single administrative framework,

both plans are improvements upon the existing situation. The plans provide:

- a. establishment of definite responsibilities
- b. increased efficiency in environmental decision-making
- c. increased coordination among agencies making environmental decisions
- d. more comprehensive environmental planning
- e. simpler relations with state and local government officials
- f. reduction in the number reporting to the President to a greater or lesser extent
- g. allowance for an authoritative national policy on the environment.

Both plans could easily be adapted to reflect the organizational bias of the President, who emphasizes a seemingly contradictory arrangement--centralization of the functional programs and decentralization of the administrative functions. The former allows responsibility and accountability to be vested in the department head rather than by default with the White House; the secretary is given authority to set, implement, and evaluate policies and settle conflicts in his functional area. The latter seeks to bring the major decision-making out into the field, where regional officials are assumed to have a better understanding of the problems as well as sufficient expertise to handle them. Two further justifications for regionalization are pertinent to the environment -- problems in this area tend to be regional in nature, and the involvement of local and state entities in resource management requires close contact to keep activities from conflicting.

Proposed Reorganizational Plan

The proposed Department of Natural Resources essentially involves transfer of the environmentally-related programs into the existing Department of the Interior, which would then be renamed. When presenting the plan, Council

chairman Roy L. Ash cautioned that "(o)rganizational structure itself does not guarantee excellent management; but even the best executive is unlikely to be effective without a workable structure--a means for synthesizing diverse efforts toward unified goals, for distributing and assigning responsibilities to the many who must perform in concert, and for assuring accountability for results".⁶ The Proposed DNR should be viewed as an attempt to provide such a structure.

The DNR is divided into two organizational layers at the federal level, as shown on Figure Two. The Secretary is appointed by the President with the advise and consent of the Senate; he is responsible for the direction and performance of the Department. He is assisted by a Deputy Secretary who acts as a general manager and allocates resources, assesses performance quality, and coordinates line and staff actions; two Under Secretaries, one to develop policies and implement plans, the other to consider questions of management and efficiency; and an Assistant Secretary for Research and Development. A General Counsel provides legal services. The Secretary may, at his own discretion, appoint up to 19 additional staff members. These 25 officials comprise the staff section of the organization, addressing the broad issues of planning, evaluation, research, and allocation of resources that face any department.

The remainder of the structure, the entire second level, is filled with people holding line positions--those who are concerned with the administration of the programs themselves. This level is divided into five functional areas, each headed by an Administrator responsible to the President:

1. Land and Recreational Resources Administration manages the 760 million acres of land owned by the federal government. It seeks to allow resource development as well as conservation of land, for many minerals and other resources are located on federal land.

PRESIDENT'S DEPARTMENTAL REORGANIZATION PROGRAM

Proposed

DEPARTMENT OF NATURAL RESOURCES

SECRETARY
Deputy Secretary

GENERAL
COUNSEL

UNDER SECRETARY
FOR
POLICY

UNDER SECRETARY
FOR
MANAGEMENT

ASSISTANT SECRETARY
FOR
RESEARCH & DEVELOPMENT

ADMINISTRATOR FOR
LAND AND
RECREATION RESOURCES

Manage Federal lands including forests

Lease federally owned minerals

Prepare nation-wide recreation plan

Manage national parks, wildlife refuges and fish hatcheries

Conduct research and development

ADMINISTRATOR FOR
WATER RESOURCES

Develop water resources survey, plan, construct and operate water resource projects

Market electric power

Administer grants to states and localities

Conduct & support research and development

ADMINISTRATOR FOR
ENERGY AND
MINERAL RESOURCES

Assess resources

Operate uranium raw materials & enrichment program

Conduct & support research and development

Oversee mine health & safety

ADMINISTRATOR FOR
OCEANIC, ATMOSPHERIC,
AND EARTH SCIENCES

Observe, record, and analyze atmospheric, oceanic, and terrestrial data

Forecast weather and other physical phenomena

Conduct surveys & mapping activities

Assist state and localities through grants and cooperative programs

Conduct research and development

ADMINISTRATOR FOR
INDIAN AND
TERRITORIAL AFFAIRS

Conduct programs for betterment, and protect the rights of

- Indians
- Alaska Natives
- Territorial People

Manage and develop assets in trust

REGIONAL DIRECTORS

Figure Two

2. Water Resources Administration emphasizes water resources planning, particularly comprehensive river basic surveys and Army Corps of Engineers civil projects; it also directs programs to conserve soil, ease navigation, manage fish and wildlife, etc.
3. Energy and Mineral Resources Administration develops a national energy policy, first studying technological, economical and ecological effects of the use of alternate resources.
4. Oceanic, Atmospheric and Earth Sciences Administration collects, analyzes and disseminates information about the environment; this section is composed of the former United States Geological Survey and the National Oceanic and Atmospheric Administration.
5. Indian and Territorial Affairs Administration handles the social, cultural and economic needs of the Indians, Alaskan natives, and the territorial peoples. These programs are placed in DNR because of their long history of association with natural resources matters.

The agencies and departments that contributed these activities are listed in Figure Three, and include most of the Interior Department; Forest Service and the Soil Conservation, among others, from the Agriculture Department; civil duties of the Army Corps of Engineers; civilian power functions of the Atomic Energy Commission; the National Oceanic and Atmospheric Administration from the Commerce Department; and the Water Resources Council. Initial confrontations with the Army Corps and the Atomic Energy Commission resulted in changes and special provisions in the legislation.

Due to the President's intent to decentralize the functional programs of the government, a field network has been established for the Department. It utilizes the ten Federal Assistance Review (FAR) regions. Assigned to each

FIGURE 3

PRESIDENTS DEPARTMENTAL REORGANIZATION PROGRAM-COMPONENTS OF THE NEW DEPARTMENTS

Present Department or Agency	Department of Community Development	Department of Natural Resources	Department of Human Resources	Department of Economic Affairs
Agriculture.	<p>Rural Electrification Administration. Certain functions and staff from the Farmers Home Administration: Water and Waste Disposal Grants and Loans. Rural Housing. Economic Research Service (Economic Development and Community Services of the Economic Development Division only). Rural Development Ser. Rural Telephone Bank.</p>	<p>Forest Service Soil Conservation Ser. Agricultural Research Service (Soil and water Conservation Division). Economic Research Service (Natural Resources Economics Division). Farmers Home Administration (Watershed Loans only).</p>	<p>Economic Research Service (Human Resources).¹ Agricultural Research Service (Human Nutrition and Consumer Research Programs). Food and Nutrition Service. Meat and Poultry Inspection. Egg Products Inspection. Departmental Management.</p>	
Commerce.	<p>Economic Development Administration (Community planning and public works only). Functions of Secretary of Commerce relating to Regional Action Planning Commissions (except business development & technical assistance).</p>	<p>National Oceanic and Atmospheric Administration.</p>	<p>Product Safety Program.</p>	<p>Bureau of Domestic Commerce. Bureau of International Commerce. Social and Economic Statistics Administration Economic Development Administration (except community planning and public works). Maritime Administration. Office of Minority Business Enterprise. Patent Office. National Bureau of Standards (except product safety). U.S. Travel Service.</p>

FIGURE 3 (Col. .)

PRESIDENTS DEPARTMENTAL REORGANIZATION PROGRAM-COMPONENTS OF THE NEW DEPARTMENTS

Present Department or Agency	Department of Community Development	Department of Natural Resources	Department of Human Resources	Department of Economic Affairs
Commerce (con't)				National Technical Information Service. Office of Foreign Direct Investment. Regional Action Planning Functions of the Secretary (business development and technical assistance only). Office of Telecommunications. Departmental Management.
HUD . . . . .	.All offices and components (except college housing). (Including Government National Mortgage Association).	. . . . .	.College Housing. ²	
DOT . . . . .	.Federal Highway Administration and its programs, except Motor Carrier Safety. Urban Mass Transportation Administration. DOT functions relating to Appalachian Regional Development Act.	Oil and Gas Pipeline. Safety Programs.	. . . . .	Federal Highway Administration (motor carrier safety program only). National Highway Traffic Safety Administration. Federal Railroad Administration. Federal Aviation Administration. Coast Guard. St. Lawrence Seaway. National Traffic Safety Board. Office of the Secretary (except oil and gas pipeline safety).
HEW . . . . .	.Grants for the construction of public libraries.	. . . . .	.All offices and components (except public library construction grants & National Institutes for Occupational Health	National Institute for Occupational Health & Safety.

FIGURE 3 (Cont.)

PRESIDENT'S DEPARTMENTAL REORGANIZATION PROGRAM-COMPONENTS OF THE NEW DEPARTMENTS

Present Department or Agency	Department of Community Development	Department of Natural Resources	Department of Human Resources	Department of Economic Affairs
Interior . . . . .	. . . . .	All offices and components.		
Labor . . . . .	. . . . .	. . . . .	Manpower Administration. Employment Service Women's Bureau. Unemployment Compensation for Federal Employees and Ex-servicemen. U.I. Benefits and Administration Overhead.	Bureau of International Labor Affairs. Labor-Management Services Administration. Employment Standards Administration (except Women's Bureau and Bureau of Employees Compensation). Bureau of Labor Statistics. Occupational Health & Safety Administration Departmental Management
OEO	Community Action Programs (including Senior Opportunities and Services). Special Impact Programs.	. . . . .	Alcoholism, Family Planning, Drug Rehabilitation. Migrants. Nutrition (phasing out).	
SBA	Residential Disaster Loan Program	. . . . .	. . . . .	Entire Administration (except residential disaster loans).
NASA . . . . .	. . . . .	. . . . .	. . . . .	Office of Technology Utilization (economic development and assistance functions only). Nonregulatory functions only.
National Mediation Board	. . . . .	. . . . .	. . . . .	Entire Service.
Federal Mediation and Conciliation Service Army Corps of Engineers	. . . . .	Corps of Engineers-Civil works and civil regulatory functions (policy, planning, and funding)	. . . . .

PRESIDENTS DEPARTMENTAL REORGANIZATION PROGRAM-COMPONENTS OF THE NEW DEPARTMENTS

Present Department or Agency	Department of Community Development	Department of Natural Resources	Department of Human Resources	Department of Economic Affairs
Army Corps of Engineers. (Con't) (investigation, study, planning, budgeting, funding and coordination to be directed by Secretary of Department-construction operation and maintenance, flood and coastal activities to remain under direction of Secretary of Army and supervision of Chief of Engineers).		
Water Resources Council.All functions.		
AEC.Uranium raw materials. Uranium enrichment. Civilian Power and nonnuclear energy programs (policy, planning, and funding only). Plowshare (policy, planning, and funding of natural resource functions only).		
Railroad Retirement BoardAll functions.	
President's Committee on Employment of Handicapped.All functions.	
Office of Emergency Preparedness	Disaster Relief Operating Functions.			

¹ Will follow Economic Research Service to DCD until DHR is established.
² Will follow HUD programs to DCD until DHR is established.

Figure Three

region are a regional director and a regional administrator. The former reports to the Secretary, and is the chief administrative official in the region: he coordinates the departmental programs in his region, crossing program lines if necessary. The regional administrator is responsible for the operation of the functional programs; he reports to the five administrators in Washington. More detailed plans for the regional structure have not been revealed, although all the offices, stations and other components of any activity transferred to the DNR are considered part of the field organization.

The appropriations procedure for the new DNR also reflects a new orientation. Budgets that are completely determined each June exhibit a marked rigidity, caused by inaccurate estimates of needs. To combat this, the new procedure allows for two different time spans. The first is the July-to-July allocation for operation and program expenses, allowing the present yearly Congressional scrutiny of the budget to continue; to prevent funds from being locked into small categories too rigid for easy management, it is proposed that the money given to the Secretary be unspecified, or, in a few cases, designated on a first level program basis only. The second is a "no year" appropriation for construction, research, land acquisition, and other long term activities; these funds would be available until expended.

Major decisions about the expenditure of these funds will be made at the regional level, in keeping with the general emphasis of decentralization. In addition, four existing grant programs totalling \$41 million would be transferred to the local branches of government under the proposed revenue-sharing program. Programs of national concern, such as the Land and Water Conservation Fund for planning, acquisition and development of land and water areas, will continue on the national level.

Discussion

It is apparent that a change in organization is planned, but will further changes result? Will an improved system of environmental decision-making be established, or will the proposed department merely become a new umbrella over existing agencies and programs? In the plans that have been released, several factors point to the latter answer:

1. The established budget for the first year operations is a summation of the budgets of the individual agencies and programs.
2. The employees for this first year are a summation of the present employees of the individual programs. Interestingly, to lessen bureaucratic opposition to the plan, the legislation stated that no employee will be dismissed because of the reorganization, nor will an affected employee receive a reduction in Civil Service grade and pay, for one year after the reorganization. This will put a constraint on the actual reorganization.
3. The DNR field offices are a summation of the existing agency offices outside Washington. This will also constrain the reorganization, since these offices are immovable, and budgetary considerations will prevent substantial change.
4. The programs transferred to the Department will be continued as before until the Secretary makes different arrangements; they may thus continue indefinitely.

Continuity does lessen the confusion resulting from major organizational changes, yet too much of it merely maintains the status quo.

One further question now arises. The existing system is inadequate, partially because control over the environmental process is so widely dispersed.

Does the new plan pass significant control to the new Department? The answer is somewhat negative, as implied by the answer to the previous question. The President retains significant powers, for he appoints the major staff employees as well as the five administrators; in addition, the administrators and their staffs---all of the line employees--are responsible to the President rather than to the Secretary of the Department. The relative sizes of the two staffs underline the influence of the President and of the bureaucrats in the existing agencies, for environmental policy is determined by administrative interpretations as well as staff decisions. It is doubtful whether the power of the entrenched interests can be broken without changing the lines of access to the agencies.

The last question is perhaps the most important; it is basically a question of efficiency: will the reorganization allow the department to carry out its functions more quickly and less expensively?

As discussed previously, the new DNR will coordinate administration and facilitate planning simply by incorporating many scattered programs into one structure. However, the degree of added efficiency depends upon the extent of the environmental responsibility incorporated and upon the manner in which it is handled. The proposed plan does not include enough aspects to ensure comprehensive planning, for each of the three environmental agencies will consider its own diverse goals. The proposed structure does not eliminate inter-agency coordination, since EPA and CEQ continue to play major roles in environmental areas. Significant interchange will be necessary--and again, only the President will have sufficient authority to settle conflicts among the three.

The procedures that handle environmental questions will be determined by the Secretary, who was given broad powers to set up the department as he

chooses. Since the Secretary, as well as several top-level advisers and staff, are chosen by the President, much depends upon the President's ability to select competent people. This is particularly important if the Secretary is to make the major decisions on the budget.

A great deal also depends upon the functioning of the regional offices, credited in the plan as providing greatly increased efficiency. The information necessary to assess the regional structures--the Ash Council materials on the alternate departmental structures and the later OMB materials on the specific regional structures, has been marked "Confidential" by the Administration and cannot be released.

The Environmental Protection Agency, considered a showcase of governmental operations by the President, would be a valid comparison to the proposed DNR. These facts should be considered:

1. Originally formed along functional lines, EPA rapidly evolved into an activity-oriented organization; the divisions are Planning and Management, Enforcement and General Counsel, Media Programs (Air, Land, Water), Categorical Programs (Solid Waste, Pesticides, Radiation), and Research and Development.
2. EPA's Administrator was also given substantial reorganizational power, and, in a transformation not as great as that for the DNR chaos reigned for over a year. This was partially due to the magnitude of the change, partially to the tight time schedule for the change. EPA's director is generally held to be effective administrator.
3. A number of the staff, including the Administrator, turned out to be Indiana lawyers, a state to which Nixon owed political chits. Much of the top staff had had little prior contact with environmental decision-making.

National Prospectus

The Reorganization Act of 1949 gives the President the power to transfer outside agencies to the Department of the Interior. The Office of Management and Budgeting also has powers of reorganization as well as extensive knowledge of the technicalities of reorganization. Most of the reorganization desired can thus be initiated by executive order.

In an interview on 5 November 1972, Nixon indicated that he intended to do just that: "We have had very little success in getting action on our reorganization plans . . . but I am convinced that the thrust of our reorganization plan . . . is right, that it is needed, and I intend to accomplish it, as much as I can, through action at the executive level unless and until the Congress acts".⁷ His first step was the appointment shortly thereafter of Roy L. Ash as the new head of the OMB, giving him a proponent of reorganization in a very powerful position. This support was essential, for the amazingly inept presentation of the plan had aroused almost all possible opposition.

Passage of this reorganizational plan through a Democratic Congress does not appear highly probable, since the Congressmen have little incentive to work for passage of a measure they did not shape.

Application to Minnesota

Minnesota already has an existing environmental decision-making mechanism like that proposed for the federal government; the Pollution Control Agency (PCA), the Department of Natural Resources, and the Environmental Quality Council (plus the governor's staff) would correspond roughly to the three parts. This change has provided an increase in efficiency and coordination, yet it does not go far enough.

Recently there have arisen situations that cannot be handled by such a mechanism; the Department of Natural Resources may grant a permit to use water for an activity, while the Pollution Control Agency may refuse the corresponding permit to return this water to the streams--or vice versa. One implication is that most development is thus controlled by this two step procedure, in which environmental protection and resource development are potentially two forces in opposition, and an orderly state-wide plan for land use and development is not followed. Other departments follow their own orientations when considering an issue, and become deadlocked on different sides. When such differences in emphasis arise, as in the copper-nickel mining controversy, only the governor can resolve the differences.

The national plan therefore cannot serve as a complete guide. It must be remembered that, as Murray Comarow of the Ash Council staff says, "In the business of government, any movement from hideous to bad is progress, from hideous to fair is spectacular. Some of the ideas we've served up could move things between bad and fair."⁹

There are lessons to be learned from the national plans. If planning and administration are to be enhanced, if coordination is to be kept to a minimum, the environmental protection powers of an EPA or a PCA must be incorporated into the overall planning process, for environmental problems result when environmental management is not comprehensive. The Ash Council rejected such a plan, claiming bias to the standard setting process; this is easily remedied by allowing an environmental policy board to determine the standards as part of the overall policy objectives. This would also result in comprehensive and realistic statewide policies.

It is more essential that the appeals procedure be protected. Presently departmental decisions can only be appealed to the department itself or to the district courts; the first procedure is by definition biased, the

second quite costly. Should an independent appellate procedure be established, the Department could be questioned without inundating the court system with environmental questions; public access would also be provided.

One interesting proposal is set forth in the national plan. It calls for an extensive utilization of a regional system, for reasons that are as applicable to Minnesota as to the United States. Since environmental problems tend to be regional in nature, a decentralization of functional programs would bring the decision-makers to the decision situations. Regions demonstrate the administrative efficiency associated with large entities. They are large enough to support considerable expertise, yet small enough to maintain the close contact with local officials that is required to ensure non-conflicting actions.

Minnesota can settle each of her conflicts separately, yet the time, resources and political delicacy required would place extreme pressure upon the governor and department heads. A better solution would be the implementation of an environmental decision-making mechanism that can handle these situations as part of standard operating procedures.

Footnotes

- 1 Theodore H. White; "How do we get from here to there?"; Life; 26 June 1970, p. 44
- 2 Roy L. Ash; "Why the Federal Government Needs Restructuring"; Fortune; March 1971, p. 66
- 3 "Mr. Z"; "The Case for a Department of Natural Resources"; Natural Resources Journal (School of Law, University of New Mexico); 1961, pp. 197-206
- 4 The Ash Council; "Memorandum for the President of the United States - Establishment of a Department of Natural Resources"; 12 May 1970, p. 6
- 5 Ibid., p. 22
- 6 Ash, op. cit., p. 64
- 7 "Transcript of Interview with President Nixon", The Evening Star and Daily News; Washington, D. C.; 9 November 1972, p. A-7
- 8 White, op. cit., p. 40

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CHAPTER XII

HOUSE FILE 2405, THE DUNN BILL

Introduction

The fragmentation of responsibility, lack of coordination, and lack of public access found in Minnesota's present environmental decision-making system has not escaped the attention of the state legislature. Various bills have been proposed to increase governmental effectiveness in the environmental area, and have been received with varying degrees of enthusiasm. House File 2405, "(a) bill for an act establishing a state environmental policy; establishing an environmental council and an environmental quality commission; (and) appropriating money," represents an attempt to adapt the National Environmental Policy Act of 1969 (P.L. 91-190, January 1, 1970) to the state government in Minnesota. The Federal Act (NEPA) has had important impacts upon federal environmental regulation; it has been acclaimed for its infusion of environmental consideration, coordination, and public access into the federal decision-making system; however, it has also been criticized for involving bureaucratic inefficiency and procedural ambiguity. The authors of H.F. 2405 have attempted to borrow the best features of NEPA while omitting or changing certain sections to ameliorate problems in the federal legislation and to best incorporate its functions into the framework of Minnesota State government.

The Federal Precedent: NEPAThe Bill Itself

According to the Act, its purposes are:

"to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate

damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the nation; and to establish a Council of Environmental Quality." (Section 2)

Title I of the Act involves a "declaration of national environmental policy" and a declaration of federal involvement and responsibility for a unified national policy of coordinated environmental efforts. The five sections of the Act which comprise Title I are intended to infuse the new criterion of environmental protection into the federal regulatory scheme.

Section 101 is a mandate to the federal government to cooperate with all units of government and private groups for adoption of innovative means and measures for protection of the environment. The objectives of the national policy are listed in section 101 (b) (1-6). These include assurance of safe, healthful, productive and aesthetic surroundings, the widest possible range of beneficial resource use, preservation of the national heritage, a balancing of population and resource use, and the enhancement of quality renewable resources and recycling. The very general nature of the policy statements and objectives is designed to insure that all aspects of man's surroundings are areas for federal concern.

To insure that the declarations of policy found in section 101 are not merely hollow promises, the Congress guaranteed federal governmental adherence to policy in NEPA's section 102. That section provides, with the directive "to the fullest extent possible," that the federal government shall: "utilize a systematic, interdisciplinary approach" in planning and decision-making (subsection A); make certain that "presently unquantified environmental values and amenities may be given appropriate consideration in decision-making along with economic and technical considerations (subsection D); "recognize the worldwide and long-range character

of environmental problems (subsection E);" . . . make available to states, counties, municipalities, institutions, and individuals, advice and information" about environmental protection (subsection F); "initiate and utilize ecological information" in planning activities (subsection G); and to "assist the Council of Environmental Quality established by Title II" of NEPA (subsection H).

The most significant but controversial segment of section 102 is subsection C, which provides that the Federal Government shall:

"Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

- (i) The environmental impact of the proposed action,
- (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) Alternatives to the proposed action,
- (iv) The relationships between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

Furthermore, section 102 (c) mandates that the federal official shall consult with all other federal agencies having jurisdiction or special expertise with respect to the environmental impact.

A further measure to facilitate implementation of the Act is provided by section 103, which directs federal agencies to assess their administrative

structure, and make proposals for compliance with the requirements of NEPA. Sections 104 and 105 clarify the fact that NEPA is supplementary to existing agency charges and does not otherwise modify the status of individual agencies.

Title II of NEPA involves the creation of a Council of Environmental Quality in the federal government. Section 201 provides that the President is responsible for transmitting an annual Environmental Quality Report to the Congress. The report is to describe (1) the status and condition of the environment, (2) current and foreseeable trends in the environment, (3) the adequacy of natural resources, (4) a review of federal programs, and (5) proposals for improvement of federal programs and new legislation.

Composition of the Council of Environmental Quality (CEQ) is described in Section 202. The body is in the Executive Office of the President and is comprised of three members: a chairman and two other persons, designated by the President, to serve at his pleasure and with the advice and consent of the Senate. Qualifications of the members are general; they are to be selected for ability to "analyze and interpret environmental trends . . . , appraise programs and activities . . . ," to be responsive to national needs, and to "formulate and recommend national policies."

The three-man CEQ was formed to represent a "watershed" in the federal relationship to environmental problems, analagous to the three-man Council of Economic Advisors. Section 203 provides for necessary staff and consultive support, and Section 204 describes the duties for CEQ. These duties are: (1) advice and assistance to the President for preparation of his Environmental Quality Report, (2) collection and analysis of information regarding NEPA policy implementation, (3) review and development of federal

policies, (4) investigations relating to environmental quality, (5) documentation of changes and causes for change in the national environment, (6) preparation of a yearly report to the president, and (7) providing the President with requested environmental information.

Section 205 mandates that the CEQ shall (1) interface with the Citizens Advisory Committee on Environmental Quality (Exec. Order No. 11472, May 29, 1969) and representatives from other citizen groups, and (2) utilize available information to eliminate duplication of effort and expense in attaining environmental quality. Sections 206 and 207 merely describe pay scales and appropriations for implementation of NEPA.

Effects and Ramifications of NEPA

The three years since the passage of NEPA have witnessed distinct changes in federal environmental regulations. Indeed, NEPA has been responsible for increased infusion of environmental concern in decision-making; this has occurred not only in individual project decisions, but in across-the-board agency programs as well. At the same time, however, hardships have resulted from the Act. Agencies which make many decisions subject to NEPA provisions have complained that the Act is responsible for waste of manpower resources, which in turn precludes sufficient consideration of cumulative long-term effects of agency decisions. It has been further charged that the Act may mislead applicants as to what they may expect of the federal agencies. The CEQ, however, has rebutted these claims; it maintains that such problems would be ameliorated if agencies would promulgate general rules and policies in compliance with NEPA, and, rather than disposing of problems on a case-by-case approach, adopt and update rules to guide daily choices.

The core concept of the NEPA approach is the environmental impact statement. The statements are required as public explanations of the environmental consequences of proposed agency actions. According to the statutory language, impact statements are required for all "major federal actions significantly affecting the quality of the human environment". Exactly what constitutes "major" and "significant" has been subject to debate and confusion. Ever since the passage of NEPA, affected officials have been somewhat puzzled as to the procedures required in preparation and circulation of 102 statements, the contents of the statements, the exact role of CEQ in the 102 process, the retroactive effects of NEPA on projects already underway, and the extent of agency responsibility for assessment of environmental consequences of projects not requiring impact statements.

CEQ has attempted to mitigate these problems with the issuance of its "Guidelines for Statements on Proposed Actions Affecting the Environment," 36 Federal Register 7724-9, April 23, 1971. Within these guidelines, CEQ has made it the responsibility of each agency to issue its own procedures for implementation of the 102 process. Specifications are given for contents of the impact statements, the actions which require them, and the federal agencies which should be involved. Although the guidelines have been helpful, confusion is not uncommon in both federal agencies and courts where impact statement issues have arisen.

Instances where governmental projects are handled by more than one agency produce other problems. Individual agencies may file separate statements, but CEQ recommends that a single, "lead agency" be responsible for coordination of impact statements. Also recommended is the joint overview statement, which is appropriate for new policy initiatives at the interagency or federal-state interface level.

The "common process" of section 102 is another aspect of the Act which has drawn criticism for producing delay and bureaucratic paperwork. NEPA requires comments from other agencies with jurisdiction by law or special expertise. These comments accompany the impact statement through the existing agency review process and are made public along with the 102 statement. Comments are required ninety days prior to the proposed action, and the responsible agency must consider them and make appropriate changes in plans thirty days before the action begins.

The ideal 102 statement is supposed to contain "full disclosure" of all known environmental ramifications and possible environmental consequences of government decisions. An affirmative duty to consider opposing views, to discuss possible alternatives, and to balance opposing considerations are found in the CEQ guidelines. The actual extent of such disclosure is limited somewhat by confusion and delays, but it is hoped that such problems will be less troublesome with increased experience and guidance by CEQ.

Those agencies of the federal government who have traditionally been concerned with environmental protection have not been subject, by reason of section 105, to change the manner in which they exercise their authority. Since almost all of the federal pollution control authority has been incorporated into the Environmental Protection Agency (EPA), CEQ has set forth in its guidelines an exemption from the 102 process for only those environmentally protective regulatory activities taken or concurred in by EPA. Such an exemption has been subject to some criticism, and EPA has reacted by proposing its own use of impact statements.

The role of the Council of Environmental Quality has been somewhat confused by the fact that the NEPA legislation does not prescribe what CEQ is to do with the completed impact statements. Decision-making authority is not vested in CEQ, and it has no veto power over agency proposals. Rather, the body is to be advisory, with a small staff (approximately sixty) for policy making and coordination. CEQ is charged with promulgation of guidelines to federal agencies for the impact statements, assistance to agencies in preparation of NEPA implementation, continuing consultations regarding performances, and review of selected programs and projects that are particularly important. In these advisory functions, the information gathered from the 102 statements is to be the basis for study and advice.

As was mentioned briefly above, the federal courts have been involved with the NEPA legislation. Citizen enforcement of the Act through the courts has provided a substantial check on agency decisions. Federal court decisions have upheld "standing" to sue of both individuals and public interest groups in diversity situations. The United States Supreme Court, in *Sierra Club v. Morton* (The Mineral King case) 40 U.S.L.W. 4397 has upheld such standing if the complaining party has direct involvement and even if non-economic interests, such as scenery or wildlife, are involved.

Under the federal Administrative Procedures Act, 5 USC §706, courts have jurisdiction to construe the applicable law in their review of agency decisions. Those decisions are reversible if determined to be "arbitrary and capricious," and if a hearing is the basis for the agency decision, it is reversible if not supported by substantial evidence.

With regard to impact statements, courts are held responsible to construe the meaning of "major" and "significant" as they apply to the NEPA legislation. Contents of the impact statements are subject to judicial review for sufficiency, but courts are more constrained in construction

of content requirements than they are in construction of the statutory language of NEPA. In general, courts have formulated a "rule of reason" which accepts as sufficient those statements which cover each of the matters required by NEPA and are done with enough detail to truthfully inform the decision makers and the public. The net effect of the NEPA litigation has been to allow both environmental groups and business interests some part in policing of federal agency decisions.

It should be remembered that the federal government is not the only group affected by the NEPA legislation. Private industry affected by federal regulations or recipients of federal funds are often subjected to the 102 process. International programs do not escape NEPA safeguards. States also are held responsible for impact analysis in their planning and administration of federal funds.

An ancillary but interrelated group in the NEPA scheme is the Citizen Advisory Committee on Environmental Quality. Created by executive order (No. 11472, May 29, 1969) the Committee is comprised of fifteen members and has the responsibility to advise the President and CEQ of the citizen viewpoint regarding all aspects of environmental quality and to recommend actions to be taken by Federal, State, and local governments and the private sector.

Although criticism still persists regarding the confusion and costs of administration under NEPA, it has had marked effects upon the federal regulatory scheme. CEQ, in its third annual report, "Environmental Quality," cited five accomplishments toward beneficial governmental reform. These are:

- (1) infusion of environmental considerations into governmental decisions and resulting governmental responsibility for environmental quality.

- (2) a systematic method of responsibility allocation and coordination among agencies.
- (3) the opening of a broad range of governmental activities to scrutiny and comment by the public, the President, and the Congress.
- (4) a lessening of agency parochialism through forced interdisciplinary efforts, and
- (5) the availability of citizen suits for enforcement of policy.

H.F. 2405: The Proposal for NEPA in Minnesota

It is perhaps natural for Minnesota to look to the federal precedent because, to a great extent, the state is fraught with the same types of problems which Congress sought to eliminate with the passage of NEPA. Minnesota is faced with fragmented responsibility, lack of governmental coordination, and inadequate citizen access to decision-making. Like practically all of the other states, Minnesota could use more consideration of environmental matters in the administration of its governmental affairs. The five accomplishments of NEPA cited by the CEQ could be of great advantage to this state; to that end, House File 2405 has been patterned very closely after that Act.

Differences in the federal government and Minnesota government make obvious a necessity for a "tailoring" job to make NEPA suit the state's needs. A danger exists in structuring the state law too closely to NEPA, since federal policies could become state policies and thereby frustrate state governmental autonomy. With these considerations in mind, the authors of H.F. 2405 set forth the bill in three major sections: first, a declaration of state environmental policy, very similar to that of NEPA; second, the creation of an Environmental Council, analogous to the federal CEQ; and third, the statutory

creation of an Environmental Quality Commission, a citizen advisory group somewhat analogous to the President's Citizen Advisory Committee.

Differences between H.F. 2405 and NEPA

Although the Minnesota bill follows very closely, and often verbatim the federal law, it embodies some very significant distinctions. Identification of such differences and the rationale behind them will be discussed below.

A. Delineation of Policy Objectives

In addition to the federal policy objectives, H.F. 2405 includes eight policy statements (Section 2(2)(7-14)) relating to various areas of state concern. Some of these represent existing state policies from Minnesota environmentally-related statutes and others are derived from the recommendations adopted by two House Land and Water Resources subcommittees during the 1969-1970 deliberations. It was felt by the authors of the bill that the objectives of state policy should be set forth in a united and coherent package to make clear the will of the state legislature.

B. Handling of Environmental Impact Statements

H.F. 2405 breaks with the federal precedent on the matter and disposition of impact statements. Whereas the NEPA 102 directive requires impact statements for every "recommendation, report on proposals for legislation and other major actions significantly affecting the quality of the human environment," the proposed bill rejects this blanket approach and instead requires impact statements only by request of the Environmental Council (section 3(2)(c)). Such requested statements could involve any project or program of the state agencies. The actual content of the impact statements includes all that required in the federal scheme, plus the additional impacts

of federal controls on state actions and the multi-state responsibilities associated with the proposed program (section 3(2)(6,7)).

The rationale for the changes in impact statement procedure results from the bureaucratic problems of the blanket federal requirements. Problems exist because courts enforce the federal impact statement mandate, which translates into thousands of impact statements and bureaucratic time and energy.

Issues have arisen over the administration of the state scheme. The bill does not prescribe how the requests will be made, and does not provide for requests by either the Governor nor the general public. It is apparently assumed that the Environmental Council will be responsible, since the members serve at the pleasure of the governor, and are subject to Senate approval. Furthermore, it is hoped that litigation over the necessity of impact statements may be avoided by the request scheme.

Environmental interests fear that the "request" discretion will not be exercised frequently enough to cover a sufficient number of potentially detrimental projects; they recommend that the state use the blanket approach of NEPA and that the increased paperwork burden be shifted to permit applicants wherever feasible.

Further suggestions include giving the Environmental Council (EC) the power to approve or reject the sufficiency of impact statements received, and allowance of impact statements triggered by a citizen petition of, for example, twenty-five signatures. Another reasonable plan would be to use the EC as a review board for projects of "significance" where conflicts could be resolved and a state position could be established.

The consensus of opinion of those who participated in the H.F. 2405 committee hearings was that large impact statement groups in the several

agencies should be avoided and that the proposed EC request system would benefit environmental decision-making and reduce environmental blunders while minimizing the bureaucratic paperwork typical in the federal system.

C. Policy Declarations

H.F. 2405 includes three pages of state policies (section 7). These are in addition to the policies and objectives of section 2. Most are more specific and involve existing policy statements from anti-pollution and environmental legislation on the statute books. These statements are directed toward specific areas where the authors of the bill feel state action and responsibility should extend. Some of the statements are very strong, such as the directive to "prevent any new pollution " (section 7(c)(1)).

The reason for consolidation and re-presentation of policy statements is to gather together all of the fragmented policy, iron out the conflicts and inconsistencies, and present them in a single package. The same fragmentation that exists in the responsibilities of the several state agencies is found in their respective and relatively low-visibility policies. Desired is the condensation of these policies into a visible, concise, and clear statement for a coordinated approach to governmental regulation.

Policy-making is one uncertain aspect of the H.F. 2405 design. Apparently, the recommended approach involves recommendations by the EC, on the basis of acquired impact statement information, to the Governor, who in turn sends the policy to the legislature for ratification. An alternative route would involve recommendations to the Governor directly from the Environmental Quality Commission, which, if acceptable, would be forwarded to the legislature. Of course, the Governor could opt to make recommendations to the legislature himself by his own informed initiative. The combination

of the three sources of policy would then represent the public, the state government, and the legislature.

It would seem advisable to include in the state policy positions some definitive statements concerning the roles of local governmental units. They should be considered in the formation of policy, and their interface with state policy should be made clear in the state's policy declarations.

It was pointed out in the committee hearings that problems of statutory construction could arise in the instances where definitions of policy are changed to fit the H.F. 2405 declarations. Some existing policy statements are contradictory and/or obsolete. It would seem advisable to make the state's environmental policy dynamic, and subject to ongoing analysis and revision. The use of existing policy may frustrate such a result.

One suggestion by environmental interests was that policy be devised by a special assistant to the governor or perhaps a policy body and then ratified by the legislature. It was anticipated that such a system would be more dynamic and eliminate the one-hundred year old statutes found in Minnesota law. Additionally, it was advocated that the policy statements be tough and specific statements to give courts rigid guidelines for policy litigation.

One further suggestion of merit involved the trade-off between economic growth and environmental quality. It was suggested that the state adopt an official policy which would define the state priorities and specify that Minnesota is willing to trade some amount of economic growth for improved quality of the environment. Indeed, such a statement could provide state agencies with firm indices for making the trade-off decision.

D. The Environmental Council

The Environmental Council (EC) is patterned very closely after the federal Council of Environmental Quality (CEQ) and represents a departure from the present Environmental Quality Council (EQC), created by executive order. The EC would be located in the Executive Office of the Governor and consist of a chairman and two members appointed by the Governor with the advise and consent of the Senate. The proposed bill calls for the members to collectively have qualifications in the areas of natural resources management, environmental planning and governmental organization.

The present EQC was created by executive authority and represents a measure to coordinate environmental decision-making and advise the Governor on environmental matters until the legislature creates a permanent statutory body to perform such functions. The EQC is composed of the Governor and department heads of the State Planning Agency, Department of Natural Resources, Pollution Control Agency, and the Highway Department. Although many other state agencies are concerned directly or indirectly with environmental issues, the EQC's agency representation was limited to the four major ones to promote efficiency while preserving representative environmental perspectives. A one-man approach was rejected since undue isolation from agency appointees could lead to communication and coordination difficulties. The structures of the federal CEQ and the proposed H.F. 2405 EC were not used because each represented large fund appropriations not available to the Governor's office. The temporary EQC was therefore devised with the Governor central in decision-making, and the agency heads involved for advice, information and cooperation in coordination.

The proposals of H.F. 2405, in contrast, do not involve any departmental representatives and no special interest groups in the membership of EC.

It was felt that agency heads are too involved in their respective positions to devote meaningful time to an EC. Funds could be appropriated by the legislature for capable full-time EC members. Additionally, use of the agency heads could provide opportunity for potential inter-departmental jealousies to enter into the considerations of the Council.

The agency heads indicated in the H.F. 2405 committee hearings a fear that the proposed EC structure could present merely another layer in state government thereby leading to further diffusion and fragmentation of responsibility. They preferred having policy left close to the agency heads in some form of interdepartmental group to preserve expertise and avoid duplication of efforts.

One fundamental distinction between the duties given the EC and those given to the federal CEQ is their respective coordinative roles. In addition to the major duties given the CEQ, the EC would be charged with "coordination of the various programs and activities of state agencies as they relate to state environmental policies . . ." (section 11(2)). That this coordinative duty is necessary in Minnesota is attested by the fragmentation of activities and responsibilities of state agencies. The EC would be charged with service as a vehicle for recommendations to the Governor and hence the legislature in terms of which agency should serve as lead agency and which other agencies will provide information inputs and other services. The proposed EC would have coordinative functions, but no real policing function, so as to eliminate the judicial enforcement found at the federal level.

The advisory role of EC is envisioned by the authors of H.F. 2405 as being of paramount importance. Like the federal legislation, the state bill makes EC advisory to the Governor in his preparation of environmental

quality report, but H.F. 2405 adds "and all other environmental issues in which action or comment by the governor is required by law or otherwise appropriate." (section 11(3)). EC is specifically to be advisory in nature; it has no independent administrative powers and issues no rulings on issues. EC would have no direct authority to establish policy since that function would remain in the legislature, but indirect authority through advice would of course be influential.

Various participants in the committee hearings proposed that the EC be given policy authority, and even quasi-judicial powers. Perhaps some authority could be effective for coordinative functions, while quasi-judicial hearings coupled with power to subpoena witnesses could prove valuable for many policy decisions.

Environmental spokesmen desired the EC to elaborate on the policy formulated by the legislature and to have a veto power for environmental impact statements. Additionally, they would like the Council and the governor to be given authority to accept, reject, or modify agency activities, rules and regulations. Environmentalists also advocated the quasi-judicial function of EC with hearings and power of publicity.

The primary rationale for the advisory-only concept of EC is to prevent interference with the administrative powers of existing agencies. Freedom is preserved for study of activities within the between agencies, and agency heads would remain responsive to the Council because of its advisory access to the governor.

The duties of the EC do not include investigations of ecological systems and environmental quality, documentation of changes in the environment, and a yearly report to the governor, as are incorporated in the NEPA legislation. Some of these duties seemed redundant in the Minnesota proposal,

since EC is given responsibility for advice and assistance to the governor for his annual report, and also the duty to gather timely and authoritative environmental information. Basically, the omissions in the state bill make EC's functions more related to information gathering than actual research. Indeed, a good case may be made for elimination of an annual governor's report (similar to the President's) since the state government is simply not equipped for the research effort of its federal counterpart.

The duties of the Environmental Council include review of programs, projects, and impact statements (section 11(9)). This provision is essentially modelled after federal Executive Order 11514 (3)(a), and would make advisable the quantification of environmental degradation. The resulting feasibility of cost-benefit analyses of state actions could lead to more efficacious environmental regulation. Additionally, policy and technology assessment that would incorporate non economic indices for evaluation of secondary or long-term effects of public and private choices could facilitate prudent resource utilization.

Section 11 (8) of H.F. 2405, patterned after federal executive order 11514 (3)(h), would make the EC responsible for preparation and issuance of guidelines for the required impact statements. Mitigation of some of the 102 statement problems can be effected by specific procedures for filing and reviewing the statements. Advisable would be mandatory requirements for information on economic growth and environmental quality trade-offs.

The Environmental Council is given the additional duty to "review all major federal-state and state-interstate organizations' programs and project proposals which relate to environmental quality and to make recommendations to the governor concerning the acceptability of the proposals" (section 11 (12)). The NEPA legislation had no analogous function defined for its CEQ, but such a duty was later imposed by executive order 11514(3)(g).

Such an addition seems wise, for the relationships between Minnesota, its neighbors, and the Federal government are of great importance in quality environmental regulation.

Unlike NEPA, the Minnesota bill includes an innovative duty for the EC: the annual convention of an environmental quality congress, which is to include representatives from all levels of government, citizens, the scientific community, and private industry (section 11(13)). The congress would be convened at the discretion of the EC which means that it is optional, but its inclusion in the proposed legislation is to act as an incentive for the Council to discover contemporary information and opinion about environmental quality regulation.

E. The Environmental Quality Commission

H.F. 2405 would statutorily underwrite the type of citizens' advisory group which exists in the federal government through executive order. Composition of the EQC would be seven members from private life, which means apparently that anyone appointed by the governor with the advise and consent of the senate would be eligible. Six year, staggered terms are specified, and the membership selects a chairman who also acts as an ex officio member of the Environmental Council and as a member of the advisory board of the state legislature's Minnesota Resources Commission. This relationship with the EC has been criticized because the "ex officio" status could, in practice, be tantamount to full membership. If this were the case, the legislation could either define the relationship as such, or else make the EQC chairman a liaison to eliminate any questions of his status with EC.

Duties of the EQC would be fourfold: (1) review and appraisal of state environmental programs; (2) gathering of information through hearings; (3) advice and counsel to the EC; and (4) recommendations to the governor, legislature, and public regarding policy or program changes. The EQC then would serve as the public opinion monitor of state agencies and the EC, with inputs from all environmentally involved sectors.

Some fear was expressed at the committee hearings that any additional citizen input mechanisms will tend to fragment and retard the environmental decision-making system. Another criticism of the proposed EQC maintained that a small group of appointees would likely be unrepresentative, and suggested as an alternative that perhaps the body should be composed of representatives of other existing committees related to the environment. Environmental interests expressed concern that EQC will merely become part of a conglomerate where individual voices are lost, and recommended instead a special assistant to the governor to act as an ombudsman as well as citizen liaison.

The choice of a seven-member group, with no special representation, again puts faith in the judgment of the politically visible governor's office and in that of the senate. Fairly representative groups have been selected for numerous other boards and commissions throughout state government, and it is expected that such would occur with selection of the proposed EQC.

Recent Developments

Subcommittee hearings, held during the 1971-72 legislative interim, have provided the impetus for modification of some provisions of H.F. 2405. A revised draft of the bill was presented at the October 5, 1972, hearings

and incorporates changes stimulated by subcommittee deliberations and expert testimony. Essentially, the proposed changes eliminate repetitious policy pronouncements, dispense with NEPA-type impact statements, and call for modification of existing statutory language to conform with the new environmental policy.

The new proposal omits all of the sections and subsections of the bill which were mere reproduction of existing statutory policy. The core policy pronouncements taken from the NEPA bill remain, and represent the generalized policy commitment not already found in statute books. The purpose of this deletion is to avoid repetition and eliminate problems in judicial statutory construction.

The second major change involves the impact statements that were available by request of the EC in the prior draft of H.F. 2405. The new proposal eliminates state impact statements, and requires instead that state agencies use specified procedures in their handling of resource-related permits. A new Section A of the bill defines "permits for natural resources" as those available under specified state statutes, and mandates that the considerations formerly required for impact statements shall be considered in any issuance or denial of such permits. Basically, those considerations are taken from NEPA and the original H.F. 2405, but include one from Minnesota's Environmental Rights Act, which insures that the responsible official shall consider "the environmental impact of the proposed action, including any pollution, impairment, or destruction of the air, water, land, or other natural resources located within the state." (new section 4(2)(i)). This addition is designed to involve the proposed permit considerations in the jurisdiction of the Environmental Rights Act.

This new approach seeks to eliminate the bureaucratic and procedural difficulties of impact statements while infusing environmental consciousness into agency decisions. However, it should be realized that state actions and those taken by non-state agencies do not always require permits and would therefore escape the scrutiny possible under the original draft of H.F. 2405. Although the formality of an impact statement would be gone, it remains to be seen that substantial reduction of state effort would follow since requirements for environmental considerations remain. It would seem that any mechanism designed to encourage environmental concern will, if successful, involve expense and effort, since research and expense are necessary for informed decision-making.

Further modifications in the bill were made to reflect the change from impact statements to permit processing. A new section 4, subdivision 4, taken from the Environmental Rights Act, prohibits the granting of permits for conduct that would be ecologically damaging "so long as there is a feasible and prudent alternative consistent with reasonable requirements of public health, safety, and welfare . . . Economic considerations alone shall not justify such conduct."

The new version of H.F. 2405 would incorporate four new requirements for the governor's annual report. These would include a review of feasible solutions to natural resource problems, ideas for efficient implementation of the policies and objectives of H.F. 2405, evaluation of statewide natural resources plans, and an annual program and budget for resource development and management. It was recognized at the subcommittee hearings that the burdens involved with an elaborate and comprehensive governor's report are substantial, but it was felt that coordinative thinking about environmental regulation was worth the investment in time and effort.

The duties of the Environmental Council would be somewhat expanded under the new draft. Some responsibility would exist for the formulation of the program and budget proposals in the governor's report. Also, the EC could be charged as the lead agency for disposition of federal impact statements, including issuance of guidelines to affected state agencies. This function would not disturb the State Planning Agency's role as clearing house for impact statements, but would provide for better integration of impact statement procedures and policies.

A clarification of the interrelationships desired between the EC and the existing state agencies is added by new section 12 (2 and 3). Coordination and cooperation are specifically directed, and the EC is given responsibility for interfacing with all levels of government.

A further addition to the bill is new section 14, which specifies that the EC is empowered to receive and disburse federal and donative funds. Such power was not recognized in the former draft of H.F. 2405 and would enhance the effectiveness of the EC in furtherance of its statutory duties.

The remainder of the proposed changes in the bill deal with modification of existing statutes to facilitate implementation of H.F. 2405.

Conclusion

H.F. 2405, in both the original and revised form, represents one approach to the redirection of the Minnesota environmental decision-making system. The proposals seek to infuse new and needed consideration of environmental issues into governmental activities. Consolidation of policy and coordination in the executive branch of state government are indeed admirable objectives and Minnesota would be well advise to take steps in those directions.

Problems necessarily inhere in any practical application of governmental design theory to everyday governmental situations. The NEPA approach may involve costs of larger bureaucratic functions and additional layers of government in the regulatory scheme. However, the benefits to be derived from increased coordination, environmental consciousness, and citizen voices in government cannot be ignored. Rather extensive governmental reorganization could be effected to produce similar results, but short of that, the proposals of H.F. 2405 would seemingly provide solutions to some very complex problems facing Minnesota environment.

CHAPTER XIII

GENERAL CRITERIA FOR ORGANIZATIONAL DESIGN

In order to be effective, the organizational design for a new environmental department should meet certain general criteria. These criteria were determined by the Stanford Research Institute while conducting their study, Development of an Organizational Design for the State of Washington Department of Ecology, November 1970. This report proposed that for any organization, an effective design should:

1. Implement the overall purpose and the specific goals of the organization. In line with the theory of management by objectives, divisions and other subunits of any organization should be structured in a way that subunit goals clearly support the overall goals and general purpose of the organization. In this case, the purpose of the new department will be laid out in the authorizing legislation and the main goals for the department will be specified by the commissioner and his management staff.
2. Show clear lines of authority and assignment of responsibilities. The main purpose of an organization design is to show clearly who is responsible to whom, and for what. This does not mean that the maxim that "every man should have only one boss" is necessarily appropriate in modern, flexible organizations that serve multiple functions and employ complex technology. It does imply, however, that every individual in the organization should have a clear understanding of his responsibilities (a) to whom, (b) for what, and (c) under what circumstances. When fully implemented, an effective organization design should provide this understanding.
3. Minimize layers of authority and organizational divisions. This principle means that, wherever possible, the best organization from the standpoint of communications up and down the line, management control, and labor cost effectiveness is the organization that has the fewest layers, or levels, of management between the top and the bottom. This principle also means that, wherever possible, the best organization from the standpoint of internal coordination and smooth work flow through the organization is the one that has the fewest divisions or subunit "walls" within it.
4. Maintain expertise in functions where needed. A counterbalance to the limitation on layers of authority and organizational segments is the need for organizational insulation of certain kinds of activities. It is a well known fact, for example, that present day need

oriented activities will tend to drive out future planning oriented activities if these two kinds of activities are placed together in the same organizational unit. Similarly, technical expertise can be overwhelmed by administrative requirements. Therefore, in designing the structure of the new department there will be a need to identify the principal kinds of activities (functions) that must be insulated into separate divisions or other subunits, in order to allow the department to accomplish its goals and general purpose.

5. Provide flexibility for (1) new program development and (2) staff assignment and career growth. An organization is inadequate if it is not able to add new programs or to provide opportunities for career growth for employees. The new department should be prepared to take on new future responsibilities in the general area of ecology.
6. Maintain balance in organizational structure. In order to provide maximum utilization of managerial strength in an organization, it is desirable for the organizational structure to be reasonably balanced in the scope of responsibilities assigned to each major segment.

OBJECTIVES FOR MINNESOTA ORGANIZATIONAL DESIGN

In outlining the specific organizational design objectives for Minnesota, the following general assumptions have been made. First, that the present system presents both general and specific problems that should be solved.* Second, that any new problems created by a proposed organizational design are preferable to the existing problems.

The organizational concept proposed for the Department of Environmental Resources should meet the following specific objectives.

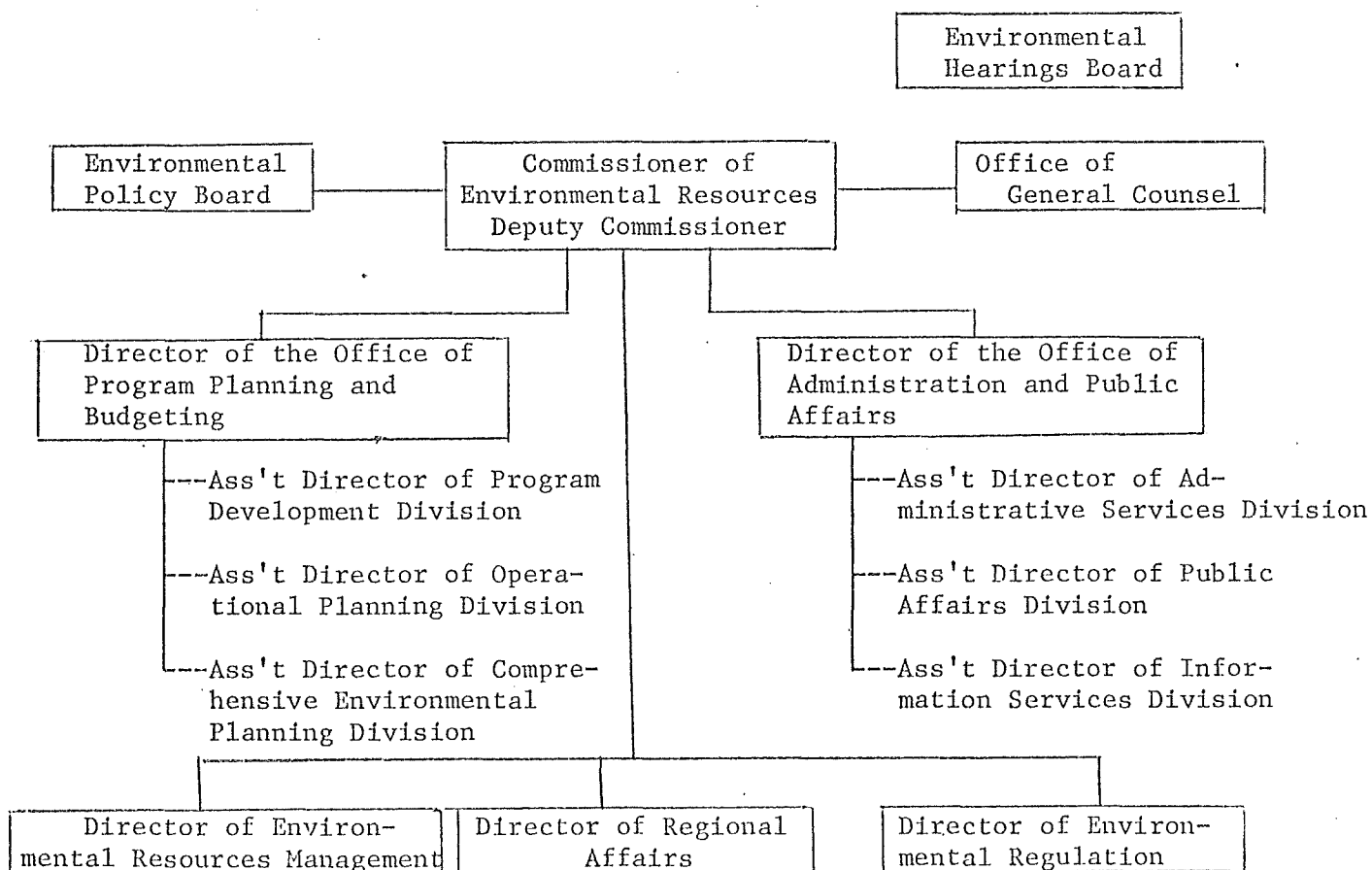
1. Increase the efficiency of administrative and technical support services. Assumptions: (a) by combining the existing agencies into a single agency, certain duplicative functions can be eliminated. For instance, administrative functions such as personnel, fiscal management, office services and purchasing and technical services such as laboratories, testing facilities and motor pools could also be consolidated into one office for the entire agency. (b) Absolute costs in terms of dollars and personnel time will also decrease if this criteria is met.
2. Increase the coordination among agencies making environmental decisions. Assumptions: (a) by combining these two agencies into one, decision making in the environmental sector will become better coordinated. (b) a single agency will provide a better coordination mechanism between it and other agencies or groups making environmental decisions.
3. Provide for a centralized Program, Planning and Budgeting Division to develop a comprehensive state environmental plan and to carry on long-range environmental planning. Assumptions: (a) adequate planning both in terms of short and long-range goals can best be accomplished within the framework of a comprehensive environmental Plan. (b) first that long-range planning is desirable, and, second, that this activity should be centered in a PPB division.
4. Provide for the separation of the regulatory-enforcement body from the appeals body. Assumptions: (a) potentially biased decisions result when regulatory-enforcement bodies also act as administrative appeal bodies of their own decisions. (b) such a system benefits all concerned. Thus, it allows the agency to become an advocate of its actions, provides for an external impartial body of review to act as a check on such actions, provides impartial redress of citizen grievances.

*For the specification of these, see Volume I of this report.

5. Establish an integrated antipollution and conservation program.
Assumptions: (a) pollution and conservation programs are inter-related. (b) the best program for the environment is one where pollution and conservation programs are jointly developed.
6. Provide for guaranteed citizen access to the environmental decision making process as well as efficient and inexpensive redress of grievances. . Assumptions: (a) citizens have a right to a meaningful access to the environmental decision process. (b) such access in some way benefits the citizen, the agency, and the public. Thus, citizen access should ensure higher quality decision making.
7. Establish integrated regional operation units. Assumptions: (a) Can more efficiently deal with local problems because of their proximity to these problems. (b) the linking of administrative units and services of separate divisions at the regional level is an important means by which to increase the understanding and the coordination of these units.

STAGE ONE INTERIM MODEL

The following model is an interim organizational proposal for a new Department of Environmental Resources. While this model does in part meet the criteria and objectives of the previous section, it should be considered only as an interim or transitional model. It was evident from the New York experience that an interim phase facilitated the reorganization process; for it not only allowed the employees to become accustomed to their new responsibilities and the Department's broadened perspective, but it gave agency personnel the opportunity to evaluate the new organization. Additionally, the existence of an interim period guaranteed the continuance of previous agency services.

Proposed Interim Structure

The new Environmental Resource Department is charged with the dual responsibilities of environmental regulation and environmental management; consequently, its functions include:

Carrying out the environmental policy of the State;

Preparing an environmental plan for the future that establishes clear priorities;

Providing for the prevention and abatement of water, air and land pollution including but not limited to that related to noise, particulates, gases, dust and aerosols, vapors, radiation, odor, nutrients and heated liquids;

Encouraging the recycling and reuse of products to conserve resources and reduce waste products;

Encouraging the disposal of solid wastes, including domestic and industrial refuse, junk cars, litter and debris consistent with sound health, scenic, environmental quality and land use practices;

Undertaking scientific investigation and research on the ecological process and pollution prevention and abatement;

Monitoring environmental conditions;

Assuring the preservation and enhancement of natural beauty and of man-made scenic qualities;

Initiating an extensive public information program to inform the public of environmental conservation principles and enlist help in programs;

Accepting responsibility for management, care, custody and control of the forest preserve and recreation facilities under the same institution and statutory policies now in existence;

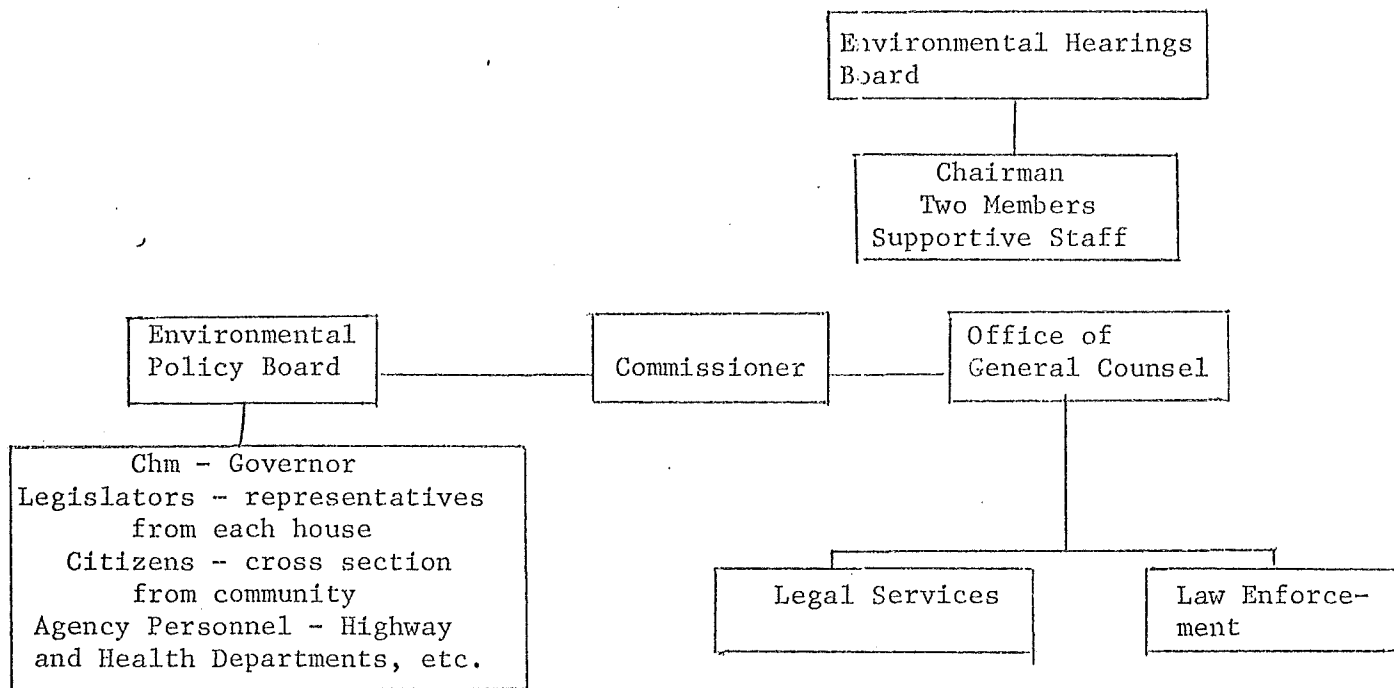
Administering the fish and wildlife laws, operating fish hatcheries and wildlife management and research.

It should be recognized that this list is not exhaustive, and it should be expanded as needs arise.

The Commissioner is totally responsible for the administration and organization of DER and he will report monthly to the Governor on the status of DER's Operations. Since the Commissioner's position is appointive, his term

will correspond to the Governor's or until a successor has been appointed.

Proposed Structure For Advisory Functions



A. Environmental Policy Board

The Environmental Policy Board sets environmental policies for the State by promulgating rules, regulations, and guidelines for the Department. In so doing the Board weighs environmental quality, economic development and population growth. The Board also has the authority to hold hearings, subpoena witnesses, and conduct investigations.

The Board is composed of eleven voting members and five advisory members. Since the Chairman of the Board is the Governor of the State, environmental policy will be directed by the highest elected official in state government. Also the Governor has the authority to appoint, with the consent of the Senate, six citizen members of the Board; these members would serve staggered, four-year terms. Additionally, four members of the Legislature will serve on the

Board and will be selected by the majority and minority caucuses of the House and Senate. These members will serve two-year terms. In order to facilitate communications between the various state agencies concerned with the environment, an advisory body to the Board consisting of representatives of the following agencies will be established: the Commissioner of the Department of Agriculture or his designee, the Commissioner of the Department of Economic Development or his designee, the Secretary and Executive Officer of the Department of Health or his designee, the Director of the State Planning Agency or his designee, and the Commissioner of Highways or his designee. It is anticipated that the Board will hold regular monthly meetings.

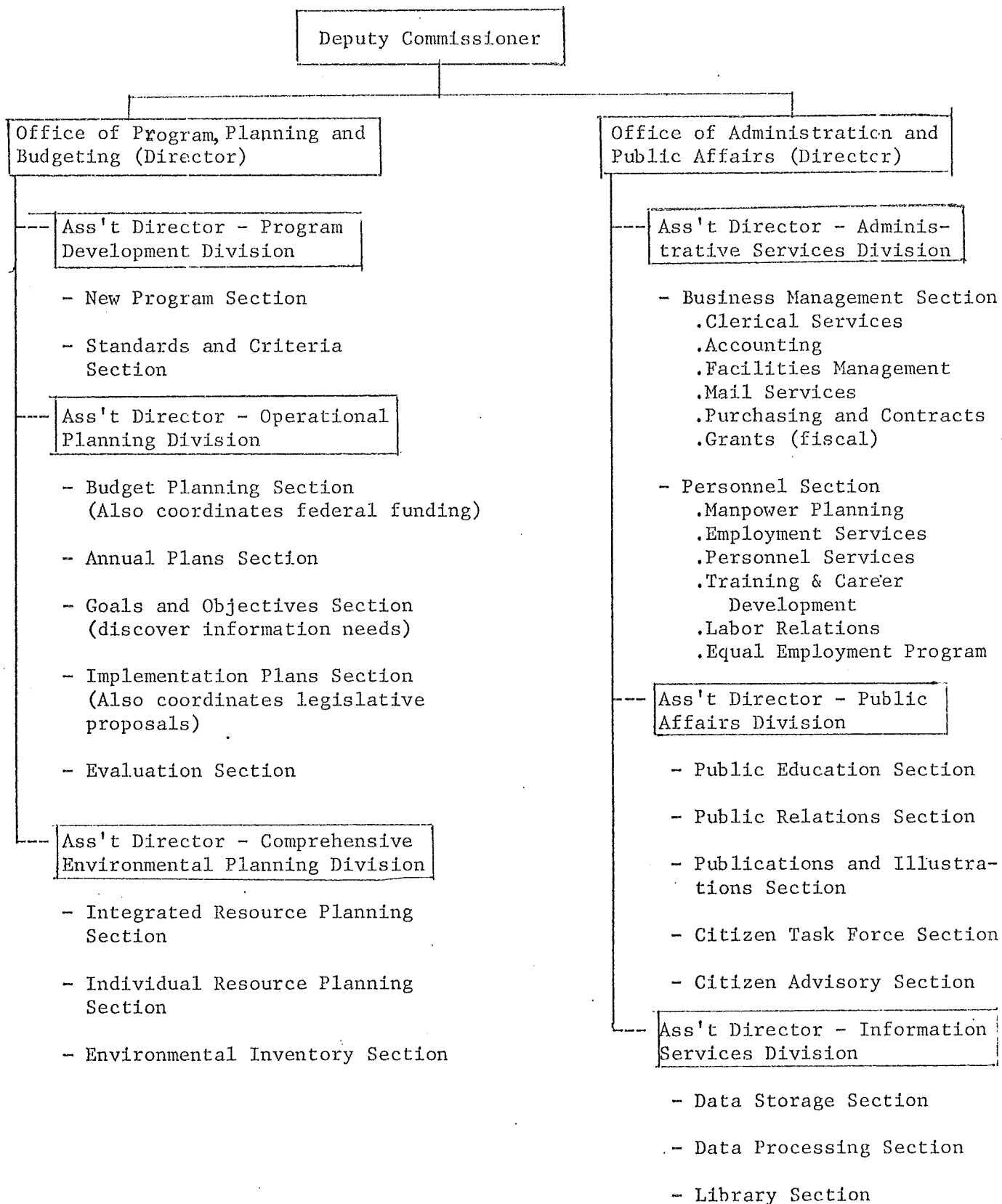
B. Office of the General Counsel

The Office of General Counsel will be staffed by the State Attorney General's Office, however, personnel will be attached directly to the Department. The Office will be responsible for providing legal advice and services to the Department and regions. This function would include the drafting of legislation, representing the Department in court actions, and heading the Department's legal enforcement section.

C. Environmental Hearings Board.

The Environmental Hearings Board will have authority to hear appeals by persons affected by the actions of the Department. It will be composed of at least three members appointed by the Governor with the consent of the Senate. Members must have experience or backgrounds in environmental affairs and at least one member must be of the legal profession. It is contemplated that members will initially serve on a part-time basis either on a per diem basis or set salary for the year. A more complete discussion of this feature is found in the next part of this report.

Proposed Structure for Staff Functions



A. Office of Program, Planning and Budgeting

This Office would be staffed by a Director with an Assistant Director for each of the three Divisions. The function of this Office is to plan for the future conservation, perpetuation, and use of the environmental resources; to develop programs responsive to the needs and problems of the environment; and to allocate the human and economic resources available to the Department.

The Division of Program Development is responsible for the following duties: (1) definition of the scope of activities for the Department; (2) development of program objectives and schedules; (3) creation of new programs for all resources with accompanying details; (4) and establishment of environmental standards, source standards, guidelines and definitions. It is anticipated that the Division will work with line personnel and federal agencies where applicable.

The Operational Planning Division will determine program costs and resource allocations during the budget planning process. It will also establish annual plans and their implementation schedules and recommend the assignment of Departmental resources to new legislative priorities. Additionally, this Division will coordinate and evaluate Departmental programs.

The Comprehensive Environmental Planning Division will prepare a long-range statewide environmental plan which will constantly be reviewed and updated. Separate plans for Environmental Resource Management and Environmental Regulations will be derived from this overall plan.

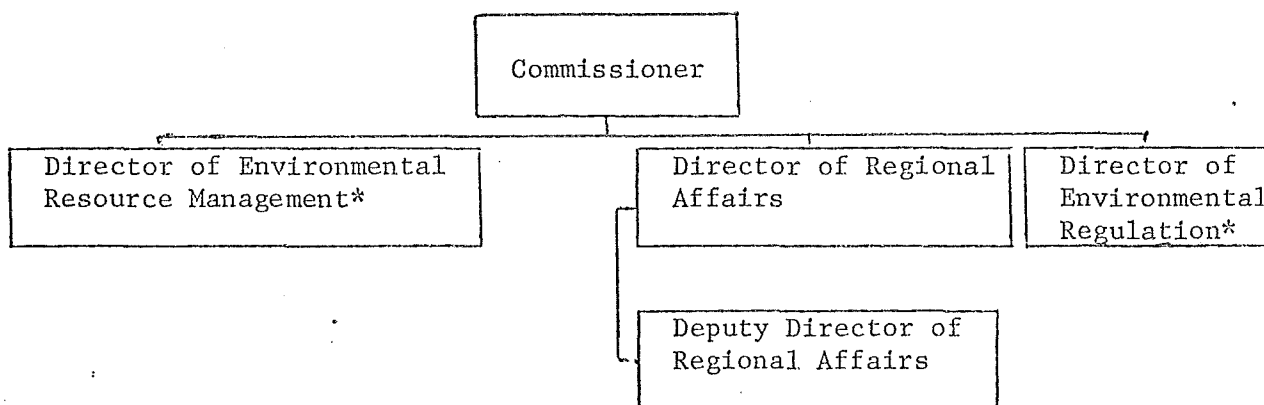
B. Office of Administration and Public Affairs

The Administrative Services Division will provide direction and administrative support to both the personnel and the operating elements of the Department in order to secure efficient allocation and expenditure of resources.

The Public Affairs Division both in the central headquarters of the Department and in public information activities administered through regional offices will be prepared to answer public inquiries relating to any news releases where appropriate, provide other informational and educational services to the general public, and staff citizen task forces developed around certain substantive topics. A citizen advisory section will coordinate and disseminate information from the various public interest groups (MECCA, MPIRG, Izaak Walton League, etc.).

The Informational Services Division will be responsible for data storage and processing, and maintenance of a library (files, microfilm storage).

Proposed Structure for Line Functions



A. Environmental Resource Management

During Stage One reorganization, the present Department of Natural Resources (DNR) will be transferred in toto to Environmental Resource Management. Resource Management will absorb all the responsibilities and duties of DNR minus those functions assigned to either the Office of Program, Planning and Budgeting or the Office of Administration and Public Affairs.

* It is assumed that the internal organization of Resource Management and Environmental Regulation will follow that of DNR and PCA, respectively.

B. Environmental Regulation

A similar procedure is anticipated for Environmental Regulation. The present Pollution Control Agency will be transferred in toto minus those non-operational functions that will be located in either the Office of Program, Planning, Budgeting or the Office of Administration and Public Affairs.

Environmental Regulation will still be responsible for assembling information required to establish a continuous picture of the ambient qualities of the statewide environment, and it will retain its permit granting authority.

C. Regional Affairs

At least during Stage One, the Regional Director will be a professional administrator and organizer with experience in state government verses someone with a specialized subject background. The Director's central task at this time will be the establishment of regional offices for the Department of Environmental Resources. He will be responsible for the development of criteria for the delineation of regional boundaries and for the process of establishing regions. Naturally, existing regions such as those utilized by DNR, PCA and the Governor's Office (eleven economic regions) will be taken into consideration.

Stage One Evaluation

General Criteria

This organization structure would meet the general criteria for organizational design mentioned previously in that it would (1) support five of the seven departmental objectives by concentrating the activities of each of the five main areas on one or two department goals* and (2) show clear lines of authority and assignment of responsibilities among directors and assistant directors, as well as section chiefs under them, (3) minimize layers of authority by providing, at a maximum, only four levels of management between the non-supervisory employees and the Director of the Department (exclusive of PCA and DNR internal organization), (4) maintain expertise in important functional areas by assigning personnel to appropriate departmental offices according to technical, administrative, operational, and planning and program development fields, (5) provide flexibility for new program development and staff assignment and career growth as a result of new divisions and areas of concern, and (6) maintain a reasonable balance of authority and responsibility in the organizational structure.

Specific Objectives

This organizational design would meet the specific Minnesota objectives discussed previously in that it would (1) create an Office of Administration and Public Affairs which would consolidate support activities currently found in both PCA and DNR, (2) establish a formal mechanism by which the activities of PCA and DNR would be coordinated both in relation to each other and to other agencies making environmental decisions, (3) create an Office of Program, Planning and Budgeting which would be responsible for new program development,

*Since the proposed structure is only interim, it is not expected that objectives will be immediately achieved.

budget planning, coordination of departmental programs, and comprehensive long and short-range planning, and (4) establish a separate Hearings Board with the authority to hear appeals of agency actions by citizens.

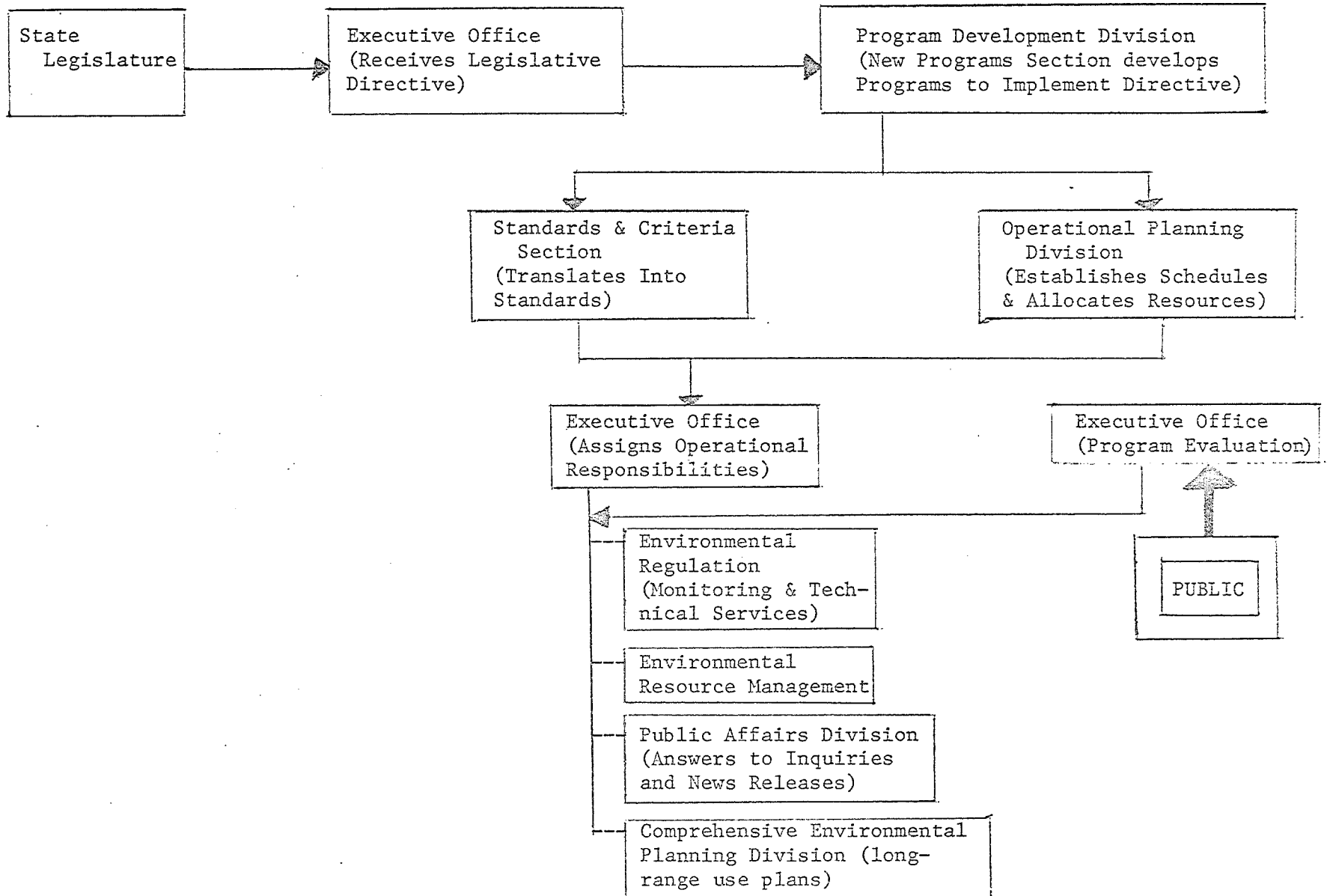
Two specific objectives are not met by the interim organizational structure. First, PCA and DNR substantially maintain relative autonomy. As a result, antipollution and conservation programs will not be highly integrated. Second, integrated regional programs will not be fully developed during the interim stage.

Testing Organizational Design

A final evaluation of the effectiveness of the organizational design proposed herein will be achieved only when it is tried out in practice. Nevertheless, some initial understanding of the utility of the design can be gained by a paper exercise to trace how the proposed organization might handle a problem.

One important test of the proposed organizational structure is to examine its ability to handle the implementation of a new act of the Legislature concerned with environmental quality matters by the various parts of the Department. The chart on the following page indicates the flow of the process through the Department.

DEPARTMENTAL IMPLEMENTATION OF NEW LEGISLATION



A new legislative directive would come into the Department through the Executive Office and then would be passed to the Program Development Division. At this point, the Program Development Division would have the primary responsibility for developing the details of the program structure required to implement the legislative directive.* After these program details are determined, the Standards and Criteria Development Section would develop any new standards needed to implement the legislative directive. Simultaneously, the Operational Planning Division would establish an implementation schedule and recommend the assignment of departmental resources to the new legislative requirements -- assessing priorities in these new assignments against priorities for existing departmental programs.

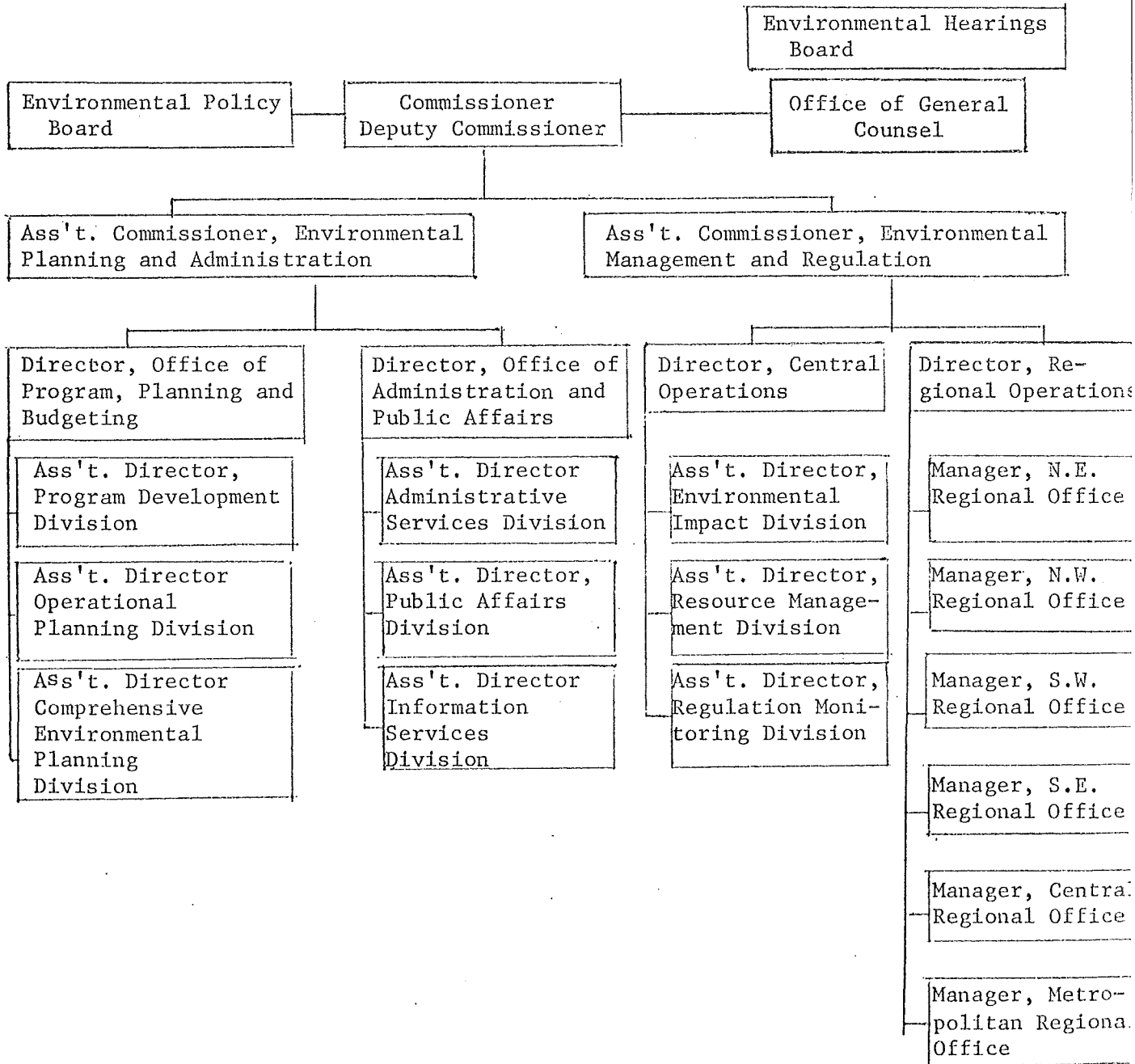
The Executive Office would then review the recommended assignment of departmental resources, evaluate the new standards, if any, and assign operational and further planning responsibilities to various parts of the Department. Responsibilities for establishing operating policies and procedures for the issuance of use permits, enforcement actions, review activities, and related operational policy matters would be assigned to either Environmental Resource Management (DNR) or Environmental Regulation (PCA). Direct responsibilities for the issuance of permits, the conduct of technical investigations and enforcement actions are expected to be assigned during this stage to the regional units of Environmental Resource Management and Environmental Regulation. Environmental Regulation would be responsible for assembling information required to establish a continuous picture of the ambient qualities of the statewide environment relevant to the areas covered in the new legislative directive and would also provide technical services required by local

* Centered in the New Program Section

authorities or other parts of the Department to carry out the new legislative directive. The Public Affairs Division would be prepared to answer public inquiries relating to the new legislation, issue news releases where appropriate, and provide other information and educational services to the general public. The Comprehensive Environmental Planning Division would be expected to prepare long-range use plans for water, air, land etc. that are called for by the new legislative directive and to incorporate these plans into a statewide plan, which it would maintain. At all stages of this process, the Executive Office would evaluate the activities of each part of the Department in terms of their contribution to program objectives.

Stage Two is the logical extension of the reorganization process initiated in Stage One. The major change from Stage One is that reliance for implementation of environmental programs has shifted from two autonomous central offices, Environmental Management and Regulation, to integrated regional offices.

Proposed Stage Two Structure

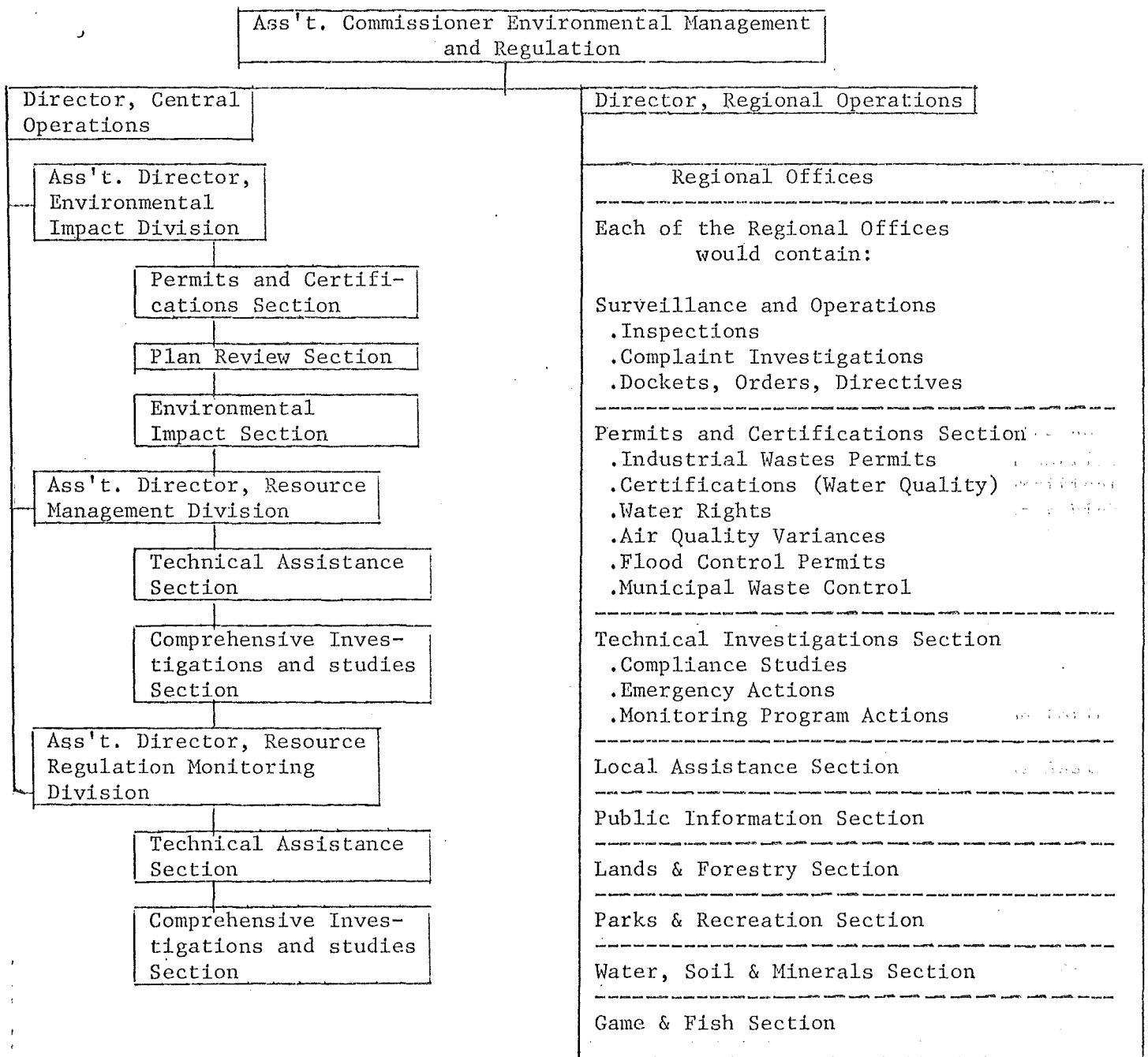


These bodies would not differ significantly in terms of structure or function in Stage Two.

Environmental Planning and Administration

The previously separate Offices of Program, Planning and Budget and Administration and Public Affairs would now be combined under the Assistant Commissioner of Environmental Planning and Administration for efficiency considerations.

Environmental Management and Regulation



A. Central Operations

Responsibilities for establishing operating policies and procedures for the issuance of use permits, enforcement actions, review activities and related operational policy matters are assigned to Central Operations. There are three separate divisions within Central Operations. The Environmental Impact Division is responsible for final approval of permits, certifications, plan reviews and environmental impact statements. The Resource Management Division provides the technical expertise required by regional offices, local authorities or other parts of the Department. The Regulation Monitoring Division is responsible for assembling information and providing regional offices with technical services in order to establish a continuous picture of ambient qualities of the statewide environment. The latter two divisions will contain sections responsible for internal consulting, procedural development, local assistance, and comprehensive investigations and will provide extensive laboratory services.

B. Regional Operations

At this time an exact regional organizational pattern has not been outlined. Instead, a list of possible functions and responsibilities for each regional office has been proposed. It is anticipated that regional offices will be established pursuant to the Department's regional organization task force under the direction of the Commissioner. However, it is recommended that the task force take into consideration that each regional organization should reflect its different regional needs relative to management and regulation activities. Thus, a metropolitan region with a heavy emphasis on regulatory functions would be organized differently than a rural or wilderness region with a heavy emphasis

on management functions. It is also recommended that, whenever possible, regulation's and management's activities and personnel be integrated.

Stage Two Evaluation

General Criteria

This organization structure would meet the general criteria for organizational design mentioned previously in that it would support all seven departmental objectives by concentrating the activities of each of the two main offices on department goals. The other general criteria are met in the same manner as Stage One.

Specific Objectives

The organizational design for Stage Two will continue to meet specific objectives 1, 2, 3, 4 and 6 in a manner similar to Stage One. Objective (5) Establish an integrated antipollution and conservation program is now met by the establishment of the single office of Environmental Management and Regulation under the direction of an Assistant Commissioner. At this point, Regulation and Management are no longer autonomous bodies. Personnel and functions have been relocated as needed to staff the new office of Environmental Management and Regulation. Objective (7) Establish integrated regional operation units is also met by the establishment of regional offices by the Commissioner's departmental task force.

Testing Organizational Design

As in Stage One, a hypothetical problem is presented in order to test the model. In this case we are examining the manner in which the new organization will carry out its regular operational responsibilities such as the environmental

monitoring program. An important distinction is made between "surveillance" and "monitoring" activities in the organization.*

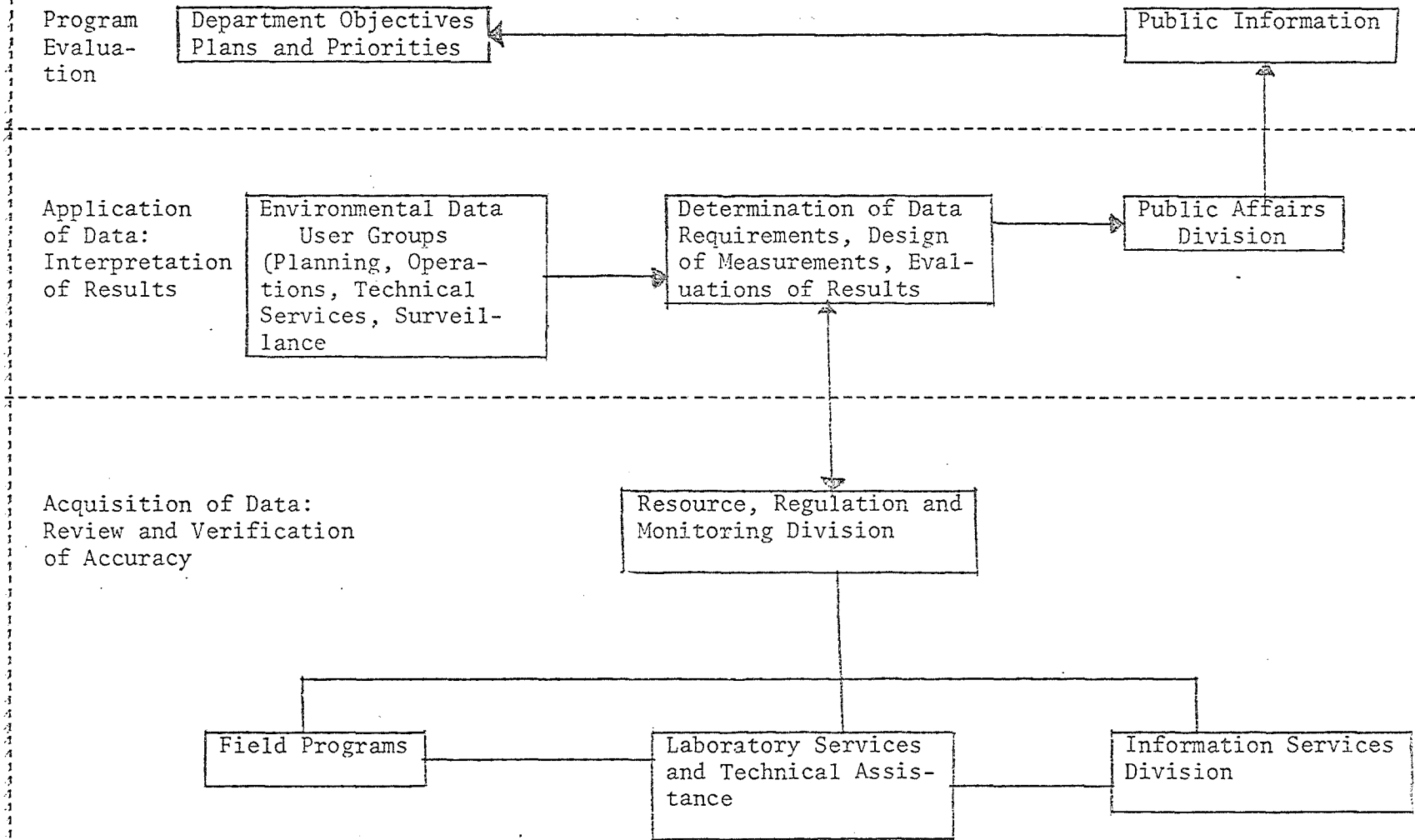
Surveillance is used to imply close watch over specific installations or operations to determine whether previously established environmental standards, permits, or regulations are being adhered to, and implying further that enforcement action would be initiated in the event that limits were surpassed. Surveillance thus connotes a routine, inspection, and procedural activity that seeks to control and manage known or potential sources of pollutants. On the other hand, monitoring implies observation and measurement of specific environments and their interrelationships. This picture is necessary for actions to minimize adverse effects resulting from an array of perturbing activities. Monitoring thus serves both short-term and long-term needs by providing the fundamental information necessary to forecast environmental impacts of present or prospective projects and to determine appropriate plans for surveillance and control.

As shown in the following figure, departmental objectives, plans and priorities establish the requirements for environmental information by several user groups concerned with functions such as planning, operations, technical services and surveillance. User requirements may be single purpose or continuing or merely demand access to the information regularly supplied by the environmental monitoring program during its routine operations. In either case, the user groups and environmental monitoring program would work together to define data requirements, measurements approach and evaluation of results. The environmental monitoring program would be responsible for acquisition of data and for review and verification of its quality. In discharging its responsibility the program would make use of field, laboratory and information processing services.

*A similar distinction was made in the Stanford Research Institutes Report, "Development of an Organizational Design for the State of Washington, Department of Ecology".

Results from the environmental monitoring program would be fed back to users through the evaluative process and furnished to other parts of the department and general public through the publications activity of the Public Affairs Division. In this way, quality control and utility of the data would be maximized through the evaluative and feedback approach.

RESPONSIBILITY



A bill for an act

relating to the creation of a department of environmental resources, as a separate agency of state government, appropriating money therefor, amending Minnesota Statutes 1971, _____, and repealing Minnesota Statutes 1971, _____.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. (LEGISLATIVE PURPOSE AND POLICY.) Subd. 1 (LEGISLATIVE PURPOSE.) The people of the state have no greater responsibility than to make every possible effort to maintain a healthy environment necessary to a productive and creative society for themselves and for the benefit of future generations.

A fundamental concern must be the wise use of all resources to minimize the adverse impact brought about by the state's rapidly growing population and expanding economy.

The problems are immense and their solutions complex.

Responsibility for the multiple facets of program and policy development for environmental protection and control is spread among a number of agencies. In order to maintain and increase the momentum of progress in environmental management, a reorganization to draw together the major strands in a single agency with comprehensive outlook and authority should now be undertaken. With a new, streamlined organization the state will be in the best position to overcome the effects of the decades of abuse of our environment and move ahead in ways which will minimize continued and new environmental problems for future generations.

This new framework must have the capability to analyze the long-range implications of development patterns and emerging technology and encourage the most desirable alternatives.

Continued economic, technological and social progress are of little

benefit if secured at the price of polluted waters, contaminated skies, a waste of land and a ravaged national heritage.

The state's continued urbanization must be adequately balanced by increased emphasis on its priceless scenic and natural endowments. Population growth, technological advances, and unwise resource utilization have too often caused a serious burden on the quality of our environment, posing a threat to the life-giving ecological balance upon which man and his world depend. This trend must be reversed.

The challenge is enormous and the potential benefits to be derived immeasurable. New efforts and new attitudes are required. Government alone cannot meet the challenge, but government, industry, and individual citizens working in cooperative partnership can bring about substantial achievements for the good of present and future generations.

It is important that a change-over to a single coordinated state department be effected at once. It is recognized that this change must be progressive, but expeditious. The first step is the creation of a new department. This act presumes that additional well considered steps will be taken to effect the over-all environmental program envisioned.

Subd. 2. (DECLARATION OF POLICY.) The quality of our environment is fundamental to our concern for the quality of life. It is hereby declared to be the policy of the state of Minnesota to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.

It shall further be the policy of the state to improve and coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other

public and private organizations and the concerned individual, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

It shall further be the policy of the state to foster, promote, create and maintain conditions under which man and nature can thrive in harmony with each other, and achieve social, economic and technological progress for present and future generations by:

- a. assuring surroundings which are healthful and aesthetically pleasing.
- b. guaranteeing that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintended consequences.
- c. promoting patterns of development and technology which minimize adverse impact on the environment.
- d. preserving the unique qualities of critical geographic and resource areas. This is to comport with Government's Environmental message, February 14, 1973.
- e. Providing that care is taken for the air, water and other resources that are shared with the other states of the United States and with Canada in the manner of a good neighbor.

Sec. 2. (DEFINITIONS.) Subdivision 1. As used in section 1 to __, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. "Commissioner" shall mean the state commissioner of environmental conservation.

Subd. 3. "Department" shall mean the state department of environmental resources.

Subd. 4. "Board" shall mean the state environmental policy board.

Subd. 5. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

Subd. 6. "Pollution" shall mean the presence in the environment of conditions and or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the state as shall be affected thereby.

Sec. 3. (DEPARTMENT OF ENVIRONMENTAL RESOURCES.) Subdivision 1. (ESTABLISHMENT COMMISSIONER.) A department of environmental resources, designated as the Minnesota department of environmental resources, is hereby established as an agency of state government. The head of the department shall be the commissioner of environmental conservation, who shall be appointed by the governor, with the advice and consent of the senate, and hold office at the pleasure of the governor by whom he was appointed and until his successor is appointed and qualified.

Subd. 2. (OFFICES OF DEPARTMENT.) The principal office of the department of environmental resources shall be in the county of Ramsey.

Subd. 3. (ORGANIZATION OF DEPARTMENT; OFFICERS AND EMPLOYEES.) Notwithstanding any inconsistent provision of law the commissioner may, from time to time, create, abolish, transfer and consolidate divisions, bureaus, field offices and other units within the department, including those transferred to the department by a chapter or chapters of the Minnesota Statutes, laws of 1973, as he may determine necessary for the efficient operation of the department, subject to the approval of the commissioner of the department

of administration.

The commissioner may appoint such deputies, directors, assistants and other officers and employees as may be needed for the performance of his duties and may prescribe their powers and duties and fix their compensation within the amounts appropriated therefor, subject to the approval of the commissioner of the department of administration.

Subd. 4. (FUNCTIONS, POWERS AND DUTIES OF DEPARTMENT AND COMMISSIONER.)

It shall be the responsibility of the department, in accordance with such existing provisions and limitations as may be elsewhere set forth in law, by and through the commissioner to carry out the environmental policy of the state set forth in section 1 to ___ of this law and as promulgated by the state environmental policy board. In so doing, the commissioner, shall have power to:

1. Coordinate and develop policies, planning, and programs related to the environment of the state and regions thereof.
2. Promote and coordinate management of water, land, and air resources to assure their protection, enhancement, provision, allocation, and balanced utilization consistent with the environmental policy of the state.
3. Provide for the propagation, protection, and management of fish and other aquatic life and wildlife and the preservation of endangered species.
4. Provide for the care, custody, and control of the forest preserve.
5. Provide for the protection and management of marine and coastal resources and of wetlands, estuaries and shorelines.
6. Foster and promote sound practices for the use of agricultural land, river valleys, open land, and other areas of unique value.
7. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

8. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.
9. Provide for prevention and abatement of all water, land and air pollution including but not limited to that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients, and heated liquids.
10. Promote control of pests and regulate the use, storage and disposal of pesticides and other chemicals which may be harmful to man, animals, plant life, or natural resources.
11. Promote control of weeds and aquatic growth, develop methods of prevention and eradication, and regulate herbicides.
12. Provide and recommend methods for disposal of solid wastes, including domestic and industrial refuse, junk cars, litter and debris consistent with sound health, scenic, environmental quality, and land use practices.
13. Prevent pollution through the regulation of the storage, handling and transport of solids, liquids and gases which may cause or contribute to pollution.
14. Promote restoration and reclamation of degraded or despoiled areas and natural resources.
15. Encourage recycling and reuse of products to conserve resources and reduce waste products.
16. Administer properties having unique natural beauty, wilderness character, or geological, ecological or historical significance dedicated by law to the state nature and historical preserve.
17. Formulate guides for measuring presently unquantified environmental values and relationships so they may be given appropriate consideration along with social, economic, and technical considerations in decision-making.

18. Encourage and undertake scientific investigation and research on the ecological process, pollution prevention and abatement, recycling and reuse of resources, and other areas essential to understanding and achievement of the environmental policy.

19. Assess new and changing technology and development patterns to identify long-range implications for the environment and encourage alternatives which minimize adverse impact.

20. Monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems and to warn of emergency conditions.

21. Encourage activities consistent with the purposes of this chapter by advising and assisting local governments, institutions, industries, and individuals.

22. Undertake an extensive public information and education program to inform and involve other public and private organizations and groups and the general public in the commitment to the principles and practices of environmental conservation and develop programs for the teaching by others of such principles and practices.

23. Cooperate with the executive, legislative and planning authorities of the United States, neighboring states and their municipalities and the Dominion of Canada in furtherance of the policy of this state as set forth in sections 1 to ___.

24. Exercise and perform such other functions, powers and duties as shall have been or may be from time to time conveyed or imposed by law, including, but not limited to, all the functions, powers and duties assigned and transferred to the department from the department of health, department of natural resources or the pollution control agency.

Subd. 5. (GENERAL FUNCTIONS, POWERS AND DUTIES OF THE DEPARTMENT AND THE COMMISSIONER.) To further assist in carrying out the environmental policy of this state as provided in section 1 to ___ of this law and as promulgated by the state environmental policy board the department, by and through the commissioner, shall be authorized to:

1. Enter into contracts with any person to do all things necessary or convenient to carry out the functions, powers and duties of the department.

2. Review and appraise programs and activities of state departments and agencies in light of the environmental policy set forth in section 1 to ___ of this law and as promulgated by the board for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy and to make recommendations to such departments and agencies with respect thereto, including but not limited to environmental guidelines for their use.

3. Consult with and cooperate with:

a. officials of departments and agencies of the state having duties and responsibilities concerning the environment;

b. officials and representatives of any public benefit corporation in the state;

c. officials and representatives of the federal government, of other states and of interstate agencies on problems affecting the environment of this state;

d. persons, organizations and groups, public and private, utilizing, served by, interested in or concerned with the environment in the state;

e. appropriate committee or committees of the legislature.

4. Appear and participate in proceedings before any federal regulatory agency involving or affecting the purposes of this department.

5. Undertake any studies, inquiries, surveys or analyses it may deem relevant through the personnel of the department or in co-operation with any public or private agencies, including educational, civic and research organizations, colleges, universities, institutes or foundations, for the accomplishment of the purposes of the department.

6. Enter and inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or non-compliance with any law, rule or regulation which may be promulgated pursuant to this article. Any information relating to secret processes or methods of manufacture shall be kept confidential.

7. Advise and cooperate with municipal, county, regional and other local agencies and officials within the state, to carry out the purposes of this chapter.

8. Act as the official agency of the state in all matters affecting the purposes of the department under any federal laws now or hereafter to be enacted, and as the official agency of a county, town, city, village or authority in connection with the grant or advance of any federal or other funds or credits to the state or through the state to its local governing bodies for the purposes of this chapter.

9. Report from time to time to the governor and make an annual report to the governor and the legislature.

10. Formulate and execute contracts, keep accounts, record personnel data, acquire real or personal property, including acquisition by condemnation, appropriation, gift, grant, devise or bequest, adjust claims, compile statistics and engage in research opportunities; all according to the

statutes or department orders and regulations in such cases made and provided.

Subd. 6. (SUMMARY ACTION.) Notwithstanding any inconsistent provisions of law, whenever the commissioner finds, after investigation, that any person is causing, engaging in or maintaining a condition or activity which, in his judgment, presents an imminent danger to the health or welfare of the people of the state or results in or is likely to result in irreversible or irreparable damage to natural resources, and relates to the prevention and abatement powers of the commissioner and it therefore appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the commissioner may, without prior hearing, order such person by notice, in writing wherever practicable or in such other form as in the commissioner's judgment will reasonably notify such person whose practices are intended to be prescribed, to discontinue, abate or alleviate such condition or activity, and thereupon such person shall immediately discontinue, abate or alleviate such condition or activity. As promptly as possible thereafter, not to exceed fifteen days, the commissioner shall adopt any other appropriate rules and regulations prescribing the procedure to be followed in the issuance of such orders.

Subd. 7. (STATEWIDE ENVIRONMENTAL PLAN.)

1. The department shall formulate and from time to time revise a statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the state in furtherance of the legislative policy and purposes expressed in this law and the policy promulgated by the board.

2. The department shall submit such plan to the governor and to the state planning agency on or before November 15 of each even numbered year and shall make a report also of progress or management and protection of quality of the environment during each biennium to the legislature with recommendations for action in furtherance of environmental quality.

Section 4. (TRANSFER OF FUNCTIONS; POLLUTION CONTROL AGENCY AND DEPARTMENT OF NATURAL RESOURCES ABOLISHED; INTERIM FUNCTIONS; CODIFICATION.)

Subd. 1. (TRANSFER OF FUNCTIONS OF THE POLLUTION CONTROL AGENCY. All the functions, powers, duties and obligations now vested in or imposed upon the pollution control agency by Minnesota Statutes, Chapter 116, or any act amendatory thereof or supplementary thereto, are hereby transferred to, imposed upon, and vested in the Minnesota department of environmental resources.

Subd. 2. (POLLUTION CONTROL AGENCY ABOLISHED.) The pollution control agency in the state government, created and established by Minnesota Statutes, Chapter 116, as amended by Minnesota Statutes, Chapter __, laws of _____, is hereby abolished.

Subd. 3. (TRANSFER OF FUNCTIONS OF DEPARTMENT OF NATURAL RESOURCES.) All the functions, powers, duties and obligations now vested in or imposed upon the department of natural resources by Minnesota Statutes, Chapter __, or any act amendatory thereof or supplementary thereto, are hereby transferred to, imposed upon, and vested in the Minnesota department of environmental resources.

Subd. 4. (DEPARTMENT OF NATURAL RESOURCES ABOLISHED.) The department of Natural resources in the state government, created and established by Minnesota Statutes Chapter __, laws of _____, as amended by Minnesota Statutes Chapter __, laws of _____ is hereby abolished.

Subd. 5. (TRANSFER OF EMPLOYEES.) Upon the transfer of functions to the department of environmental resources pursuant to this law, provision shall be made for the transfer to the department of environmental resources of such employees of the department of natural resources and pollution control agency who are engaged in carrying out such functions as may be necessary for

the exercise of the functions of the department of environmental resources, subject to the approval of the commissioner of the department of administration. Employees so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classifications and status. For the purpose of determining the employees holding permanent appointment in competitive class positions to be transferred, such employees shall be selected in each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and nondisabled veterans. Any such employee who, at the time of such transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination or termination as though such transfer had not been made. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to the civil service law.

Subd. 6. (TRANSFER OF RECORDS.) The commissioner of the department of natural resources and the director of the pollution control agency shall deliver to the commissioner of environmental resources all books, papers, records, and property of such department and commission pertaining to the functions herein transferred.

Subd. 7. (CONTINUITY OF AUTHORITY.) For the purpose of succession to all functions, powers, duties, and obligations of the department of natural resources and the pollution control agency transferred and assigned to, dissolved upon and assumed by the department pursuant to this chapter, the department shall be deemed and held to constitute the continuation of such departments, commissions, boards or other agencies and not a different agency or authority.

Subd. 8. (COMPLETION OF UNFINISHED BUSINESS.) Any business or other matter undertaken or commenced by the department of natural resources or the pollution control agency or the commissioner or director thereof, pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned, and pending on the effective date of this chapter, may be conducted and completed by the department of environmental resources in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the department of natural resources or the pollution control agency or the commissioner or director thereof.

Subd. 9. (CONTINUANCE OF RULES AND REGULATIONS.) All rules, regulations, acts, determinations and decisions of the department of natural resources or the pollution control agency, or the commissioner or director thereof, pertaining to the functions transferred and assigned by this chapter to the department in force at the time of such transfer, assignment, assumption or devolution shall continue in force and effect as rules, regulations, acts, determinations and decisions of the department of environmental resources until duly modified or repealed by the department of environmental resources.

Subd. 10. (TERMS OCCURRING IN LAWS, CONTRACTS, AND OTHER DOCUMENTS.) Whenever the department of natural resources or the pollution control agency, or the commissioner or director thereof, the functions, powers, obligations and duties of which are transferred by this chapter to the department, are referred to or designated in any law, contract or document pertaining to the functions, powers, obligations and duties hereby transferred and assigned, such reference or designation shall be deemed to refer to the department of environmental resources or the commissioner of environmental conservation as may be appropriate.

Subd. 11. (EXISTING RIGHTS AND REMEDIES PRESERVED.) No existing right or remedy of any character shall be lost, impaired or affected by reason of this law.

Subd. 12. (PENDING ACTIONS AND PROCEEDINGS.) No action or proceeding pending at the time when this law shall take effect, brought by or against the departments of natural resources or the pollution control agency or the commissioner or director thereof, the functions, powers, obligations and duties of which are transferred by this chapter to the department shall be affected by any provision of this chapter, but the same may be prosecuted or defended in the name of the commissioner or department of environmental resources. In all such actions and proceedings, the department of environmental resources, upon application to the court, shall be substituted as a party.

Subd. 13. (TRANSFER OF APPROPRIATIONS HERETOFORE MADE.) All appropriations or reappropriations heretofore made to the department of natural resources or the pollution control agency for the functions and purposes herein transferred to the department by this chapter, or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the department of environmental resources subject to the approval of the commissioner of the department of administration for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the commissioner of environmental resources on audit and warrant of the comptroller. Payments for liabilities for expenses of personal service, maintenance and operation heretofore incurred the department of natural resources or the pollution control agency, in connection with the functions herein transferred, shall also be made .

on vouchers or certificates approved by the commissioner of environmental resources on audit and warrant of the comptroller.

Subd. 14. (CODIFICATION OF CHANGES.) The commissioner of environmental resources shall prepare or cause to be prepared for submission to the legislature not later than _____, 19__, a codification of the laws relating to the functions, powers and duties of the department of environmental resources as amended, repealed or modified by this chapter and other acts related thereto and such other measures as may be appropriate to effectuate the purposes of this chapter and such acts.

Section 5. (STATE ENVIRONMENTAL POLICY BOARD.) Subd. 1. (CREATION OF STATE ENVIRONMENTAL POLICY BOARD; MEMBERSHIP.) There is hereby created within the department of environmental resources the state environmental policy board, which shall consist of eleven voting members and five advisory members. The eleven voting members shall include the governor as chairman; six members from the general public appointed by the governor, by and with the advice and consent of the senate; and four members from the legislature, one member being selected by the majority party caucus of the senate, one member being selected by the minority party caucus of the senate, one member being selected by the majority party caucus of the house of representatives, and one member being selected by the minority party caucus of the house of representatives. The five advisory members shall be the Commissioner of the Department of Agriculture or his designee, the Commissioner of the Department of Economic Development or his designee, the Secretary and Executive Officer of the Department of Health or his designee, the Director of the State Planning Agency or his designee, and the Commissioner of Highways or his designee.

Subd. 2. (ORGANIZATION OF THE BOARD; TERMS OF OFFICE.)

1. The Governor of Minnesota shall be the chairman of the board.

2. Of the six members of the board appointed by the governor, first to be appointed, one shall be appointed for a term of one year, two shall be appointed for a term of two years, one shall be appointed for a term of three years, and two shall be appointed for a term of four years. Thereafter, all appointments shall be made for terms of four years beginning on _____ of the year in which the appointment is made.

Each of such appointed members of the board shall hold office for the term for which he was appointed and until his successor shall have been appointed and taken office in his stead or until he shall resign or be removed in the manner provided by law. In the case of any vacancy other than one arising by expiration of term an appointment to fill the vacancy shall be made for the remainder of the unexpired term.

3. The four members of the board from the legislature shall be selected for terms of two years beginning on _____ of odd-numbered years.

Subd. 3. (COMPENSATION.) The members of the board, except those who serve ex officio, shall receive as compensation for his services the sum of \$_____ per day for each day or fraction thereof spent in attending meetings of the board or in performing other duties required by law, and each member of the board shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

Subd. 4. (FUNCTIONS, POWERS AND DUTIES OF THE BOARD.)

1. To further assist in carrying out the policy of this state as provided in section 1 to ___ the state environmental policy board shall have the authority, responsibility and duty to:

a. Pursuant and subject to the provisions of Minnesota Statutes,

Chapter 15, and the provisions hereof, adopt, amend, and rescind rules governing its own administration.

b. Pursuant and subject to the provisions of Minnesota Statutes, Chapter 15, and the provisions hereof, adopt, amend, or rescind environmental standards and rules and regulations having the force of law to carry out the purposes and provisions of this act. Any such standard, rule or regulation may be of a general application throughout the State, or may be limited as to time, place, circumstance, or condition in order to make due allowances for variations therein.

Environmental standards shall be premised upon scientific knowledge of causes as well as effects based on technically substantiated criteria and commonly accepted practice.

c. Conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and documents by the issuance of subpoena.

d. Assist the commissioner of environmental conservation in the review and appraisal of programs and activities of state departments and agencies in light of the policy set forth in section 1 to ___ of this law and as promulgated by the board for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy.

e. Take cognizance of plans, policies and programs of all state departments and agencies relating to environmental conservation to facilitate coordination and effective implementation of such plans, policies, and programs.

f. Serve as a working forum for the exchange of views, concerns, ideas, information and recommendations relating to the quality of the environment.

g. Establish such advisory committees as may be necessary and convenient.

2. The board shall exercise and perform such other functions, powers and duties as may be requested by the chairman.

Subd. 5. (MEETINGS OF THE BOARD; QUORUM; VOTE TO APPROVE ENVIRONMENTAL STANDARDS.)

1. The board shall:

- a. meet at least _____;
- b. keep a record of all its proceedings;
- c. determine the rules of its own procedures.

2. Special meetings of the board may be called by its chairman upon his own initiative and must be called by him upon receipt by him of a written request therefor signed by _____ members of the board.

3. _____ members of the board shall constitute a quorum when the board exercises its responsibilities to act on proposed environmental standards, criteria, rules or regulations having the effect thereof or changes thereto at both regular and special meetings.

4. _____ members of the board shall constitute a quorum for the transaction of any other business of the board, at both regular and special meetings.

5. The term "members" as used in this section shall mean voting members unless a different meaning appears in the text.

6. At least _____ prior to each meeting, the chairman of the board shall give written notice to each member including non-voting participating members of the board of the time, place and purpose of such meeting, except, however, that in the event of an emergency such notice may be given orally and without regard to time.

Subd. 6. (STAFF SERVICES.) Staff services for the board shall be performed, insofar as practicable, by personnel of the department of environmental conservation, or such state departments or other agencies as the chairman deems appropriate or desirable.

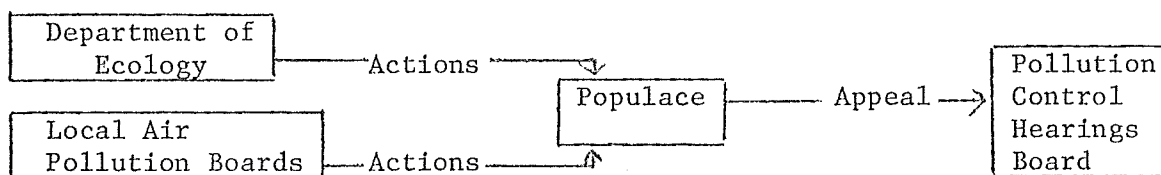
CHAPTER XIV

PROPOSED MINNESOTA ENVIRONMENTAL HEARINGS BOARD

This report on the proposed Minnesota Environmental Hearings Board is divided into three sections. The first section contains a detailed discussion of the Washington Pollution Control Hearings Board, the model for the Minnesota Board. The second section contains a discussion of the board concept, while the final section located in the appendix contains the proposed Minnesota Environmental Hearings Board in the form of two legislative acts.

Washington Pollution Control Hearings BoardSource and Scope of Authority

The three member Hearings Board was created by the 1969 Washington Legislature in conjunction with the creation of the Department of Ecology (R.C.W. 43.21B, see appendix for copy). The Board is a separate quasi-judicial body who has the authority to hear appeals from actions of the Department of Ecology and local air pollution boards.



Specifically the jurisdiction of the Board is defined as follows:

- "a) Appeals will be from the issuance, modification or termination of any permit or license issued by the Department or air pollution control boards or authorities, including the issuance, modification, or termination of waste disposal permits; the denial of the application for such permits, or the denial of an application for the modification of the terms of such permits.
- b) The Board also has jurisdiction to hear and decide appeals from any person aggrieved by an order issued by the Department or by such air pollution control boards or authorities with

respect to violations of any law administered by the Department or of any rule or regulation adopted by the Department or by air pollution boards or authorities inclusive of any variances which the Department or air pollution boards and authorities may be authorized to grant, but exclusive of appeals upon claimed violations of their purely administrative rules and regulations" (see appendix W.A.C. 371-08-005).

The basic rationale given for the creation of the Board was that the Director of the Department of Ecology should not have both standard setting functions and quasi-judicial functions, jobs which are in conflict. Both environmentalists and businessmen backed the creation of the Board but for opposite reasons. The environmentalists saw the Board as a body to whom they could appeal any actions of a weak director. For instance, the granting of too many waste discharge permits. They also felt the Board would enable the Director to play the role of an environmental advocate, unfettered by the role of arbitrator of Department actions. Businessmen saw the Board as a body to reduce the effects of any potential arbitrariness or overzealous enforcement of environmental standards by the Department's Director. Once it was evident that these forces supported the Board, the Governor and both parties quickly followed. The result was that the Board concept met little opposition in its passage by the Legislature.

The stated purpose of the Board is found in R.C.W. 43.21B.010 Board Created Purpose and reads as follows:

"There is hereby created a pollution control hearings board of the state of Washington as an agency of state government.

The purpose of the hearings board is to provide for a more expeditious and efficient disposition of appeals with respect to the decisions and orders of the department and director and with respect to all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 R.C.W."

Membership on the Hearings Board

Although the Hearings Board is part of the judicial process, only one of its three members is required to be in the legal profession. All

members are appointed by the Governor with the consent of the Senate and are required by statute to be experienced or trained in matters pertaining to the environment. Not more than two of them at the time of their appointment or during their term shall be members of the same political party.

Members of the Hearings Board are appointed for terms of six years or until their successors have been appointed and qualify. Initial appointments were for two, four, and six year periods. Members may be removed for inefficiency, malfeasance or misfeasance in office, but only after written charges are filed by the Governor and a three judge panel of the Superior Court has so decided.

A chairman is elected by the Board from its members biennially. The duties of the chairman are to preside over the regular monthly meeting of the Board and to administer all official business of the Board.

The present members of the Board are Judge Matthew W. Hill, chairman, Walt Woodward and James T. Sheehy. Judge Hill is a former Washington State Supreme Court Justice who reached the constitutionally mandatory retirement age of 75 in 1969. Judge Hill's initial two-year term has expired, although he has continued his duties until a successor is appointed and qualifies. Mr. Woodward was formerly Public Affairs columnist and editorial writer for The Seattle Times and is presently owner and publisher of The Bainbridge Island Review. Mr. Sheehy is a former Executive Vice President of I.T.T. Rayonier and is presently a Director of the Hood Canal Environmental Council.

Funding

Funding for the Hearings Board is provided by biennial Legislative appropriations. The Legislature provided the Governor with the option of allowing the Hearings Board to operate on a part-time or a full-time basis.

Each member receives \$75 for each day spent in the performance of his duties, provided that the per diem payment may not exceed \$10,000 per member in any single calendar year. Members also receive re-imbusement for travel and other expenses incurred in the discharge of their duties.

The Board was given the authority to hire or contract for the necessary staff personnel. Presently, the only full-time staff member is a clerk-secretary in the Board's official office in Olympia. The Board contracts for court reporting and any other necessary administrative services that cannot be handled by the clerk-secretary. The Board also has the power to contract for professional help if they so desire.

Judge Hill informed the interview team that, so far, the greatest single expense has been for court reporting, filing, duplicating and etc. in conjunction with the various conferences and hearings.

Rules, Regulations and Policies

When establishing the Hearings Board, the Legislature promulgated general statutory rules of operation (see appendix R.C.W. 43.21B), but the Hearings Board was given the authority to specify rules of operation. This task was accomplished after a survey of the procedure of other administrative boards. The final draft of the rules was adopted by the Hearings Board after public hearings and is codified in Washington Administrative Code 371-08-005 through 371-08-245 (see appendix for copy).

Judge Hill stated that the unwritten policy of the Board has been to provide a forum where any individual has the opportunity to be heard. It is in this spirit that the Board travels to the actual location of the dispute and hears all those who have an opinion on the issue in question. Judge Hill characterized the Board's position toward polluters as "tough but fair".

Basic Operating Policy

The three-man Hearings Board was established to provide a speedy, easily accessible forum for the hearing of appeals concerning Department of Ecology actions. Two members of the Board constitute a quorum for making orders or decisions or for promulgating rules and regulations relating to its procedures. One member may hold hearings and take testimony, although all proceedings and testimony are reported to the full Board and final decisions are made by a majority of the Board.

Since the Board travels to the scene of the dispute, a number of externalities occur. First, it saves money for the citizen filing the appeal by not requiring him or his witnesses to travel to Olympia. Second, it allows the Board to obtain first hand information at the actual scene of the dispute. Third, it allows the Board to conduct three separate proceedings at the same time.

In order to illustrate the operation of the Board, the following hypothetical example will be used:

John Martin (sole proprietor) operates a small sawmill along a river in eastern Washington. The mill is approximately 2 miles up river from a town of 2,500 people. Martin employs roughly 30 men and is one of the major employers in the community. Martin was granted a conditional waste discharge permit based on an improvement schedule of his treatment facilities. Martin has fallen behind schedule and the DOE revokes his permit. Martin hears of the Hearings Board and decides to appeal the revocation. His basic argument is economic conditions have forced him to fall behind schedule, but that he has been making a good faith attempt to comply.

The Filing of a Notice of Appeal

Martin has the option of retaining an attorney or representing himself. He decides that due to economic considerations and the fact that his argument for noncompliance is basically an equitable one he will represent himself. Martin has only 30 days from the date he received notice of the permit revocation from the Department of Ecology to file the Notice of Appeal. Failure to

file within the 30 day time limit results in the loss of any appeal right both to the Board and to the Court System.

Martin files the Notice of Appeal with the clerk of the Hearings Board at its principal office in Olympia. This filing can be done by mail. Martin must also file a copy with the Department of Ecology. The Notice of Appeal must contain the following items:

- (1) The name and mailing address of the appealing party, and the name and address of his representative, if any;
- (2) The appealing party's legal residence or principal place of business within the state;
- (3) A copy of the order or decision appealed from;
- (4) The grounds upon which the appealing party considers such order or decision to be unjust or unlawful;
- (5) A statement of facts in support of each argument stated;
- (6) The relief sought, including the nature and extent;
- (7) A statement that the appealing party has read the Notice and believes the contents to be true, followed by his signature and the signature of his representative, if any. If the appealing party is unavailable to sign the Notice, it may be signed by his representative.

Appeals are granted in all cases except where jurisdiction of the Hearings Board does not lie. That issue may be raised by either party or by the Board. Assuming the jurisdiction does lie, Martin would receive a notice in the mail granting the appeal.

Conferences

There are two types of conferences that may be held, informal and prehearing. Informal conferences are held at any time prior to the hearing on an appeal. They occur either by the filing of a written request by any party or at the discretion of the Board. The purpose of informal conferences is to reach a settlement between the parties. Let us assume an Informal Conference has been requested and is scheduled to be held in Waldo on January 31. The presiding member of the Board would open the conference with Martin

and a member of the Attorney General's staff representing the DOE present. A staff member of the DOE could also be present. It is the policy of the Board to do everything possible to reach an early settlement of the matter in dispute.

At this conference there are three possible results. First, a partial agreement to some part or to some of the issues in dispute could be reached. Second, a complete agreement could be reached; in which case, a final order would be issued by the Board disposing of the Appeal. In either of these two cases, the agreement(s) would have to be in accordance with the law and facts or the Board would be required to continue the appeal process. The last possible result would be that no agreement would be reached. In that case the process would continue with the scheduling of a prehearing conference. Let us assume that the January 31 informal conference did not result in an agreement.

The prehearing conference occurs after the informal conference. The informal conference is not, however, a necessary prerequisite to a prehearing conference. The purpose for the prehearing conference is to prepare the way for a smooth efficient Hearing. This is done by the Board and the parties reaching an agreement on such matters as the issues of law and fact, witnesses to be called and etc. The prehearing conference is not mandatory, either party or the board may call one. The general practice of the Board has been to call a prehearing conference if the parties do not.

Assuming that Martin and DOE did not reach an agreement at the informal conference, a prehearing conference could in fact be held immediately. Under the direction of the presiding officer, Martin and the DOE representative would again go over the facts of the case. Uncontested facts such as the location of Martin's plant, the amount of discharge into the river, or the terms

of the original pollution agreement would be agreed on. Each side would then inform the officer of the witnesses they wished to call at the Hearing. Martin would probably list some of his employees, the town banker, local businessmen and etc. The Board has made it a policy to allow as many witnesses as desired, if they bear some relationship to the issues of law or fact in dispute. The DOE would probably only call the fieldman who originally negotiated the agreement with Martin and any other employees who were directly involved in the case. It should be noted that the Board may call its own witnesses. Once this type of activity has been completed, the officer will schedule the case for a Hearing.

Hearings

There are two types of hearings available to Martin, informal and formal. Informal hearings permit a wider latitude in the exploration of possibilities of settlement and agreement, because strict rules of evidence are not followed. Appeals from decisions of the Board in informal hearings are de novo in the Superior Court. Appeals from Superior Court decisions are direct to the Supreme Court. Formal Hearings are more strictly limited to the determination of the issues of fact and law as developed at the prehearing conference. Appeal from these decisions is direct to the Court of Appeals. Appeals from the Court of Appeals are made to the Supreme Court. Thus, in appeals from either informal or formal hearings, the appealing party has only one other Court to go through before he reaches the State Supreme Court.

Informal hearings are the rule; however, formal hearings will be held if either party so elects. Generally, in cases such as our hypothetical one, informal hearings have been held. It is only in those cases involving larger businesses or issues that formal hearings are held. A notice of 30 days is required for all hearings, although this may be waived by agreement of all parties. Hearings are held in the town of the appealing party. Continuances

and cancellations are permitted under the rules of the Board.

Any member of the Hearings Board may preside at a hearing. After the hearing has been called to order, Martin would introduce his evidence and call his witnesses. Next the DOE would introduce its evidence and call its witnesses. Once all of the parties have rested, the presiding officer may present any evidence he deems necessary to decide the appeal fairly and equitably.

The presiding officer at the close of evidence prepares a proposed or recommended decision or order in writing, which includes findings and conclusions concerning each contested issue of law and fact. One copy is filed with the Board and one copy is mailed to each party.

Upon receipt of this proposed decision, a party has 20 days to file a written brief or statement of position or present oral testimony on the particular motion of exception. For instance, assume that a proposed decision has gone in Martin's favor, but the DOE does not agree with some facet of it. The DOE could file an exception to the whole decision, of course, or they may file an exception relating only to the portion they disagree with. Martin would receive a copy of the motion, and could either file a brief or statement of his feelings on the matter or even present oral testimony to the Board. After review of the motion and Martin's response to it, the Board may introduce any additional evidence it deems necessary to aid it in its decision. Remember, a final decision of the Board has not yet been made.

At this point the full Board meets and reviews the entire record.* At least two members of the Board are necessary to reach a final decision and

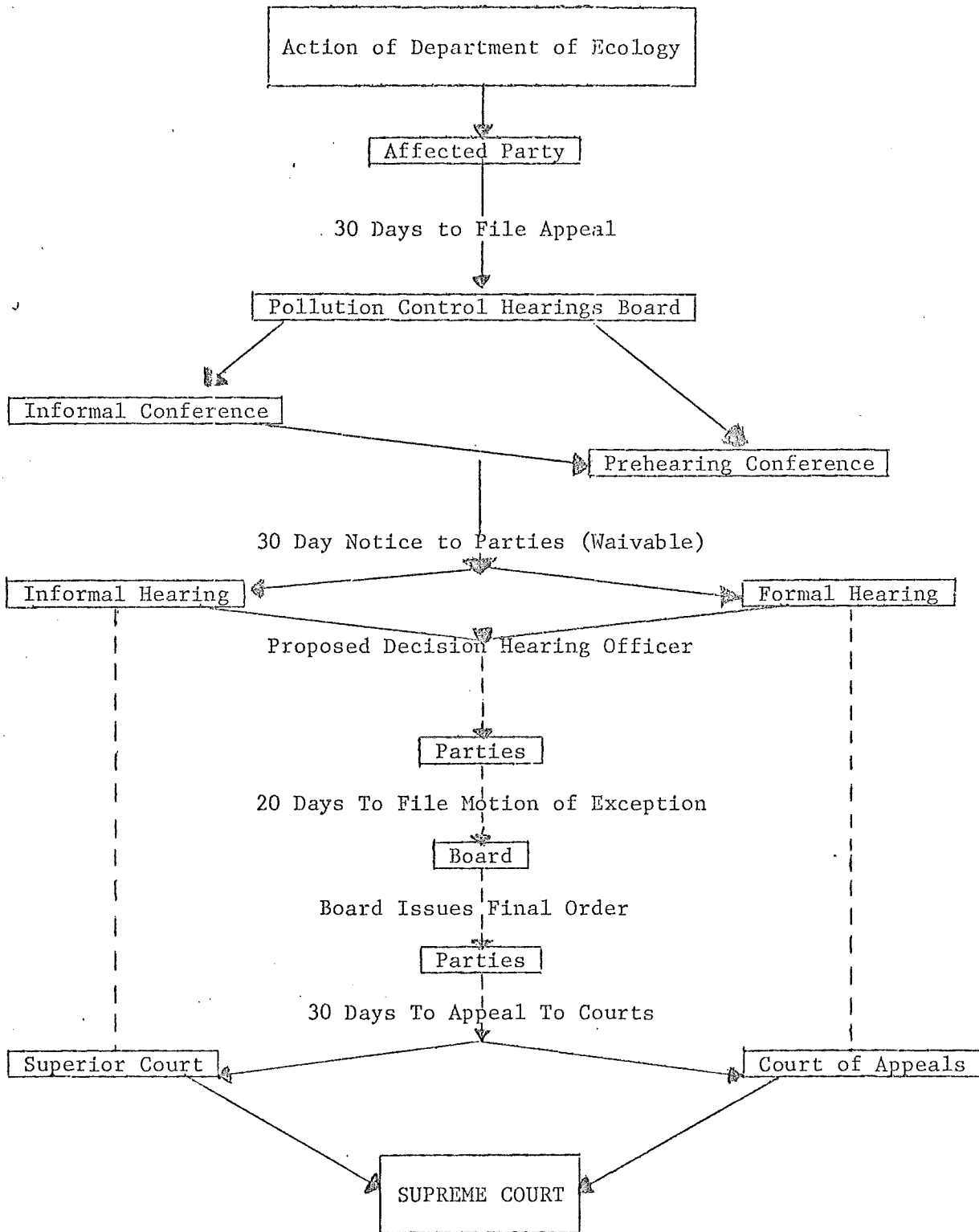
* A record consists of the following: order appealed, notice of appeal, responsive pleadings, notices of appearances, motions, stipulations, requests, depositions, all exhibits offered in evidence, and a transcript of testimony at the hearing.

issue an order. Let us assume a final decision has been reached that is substantially the same as the proposed decision. It should be pointed out that if neither party files a motion of exception within the 20 day time limit, the preliminary decision of the single member hearing the case would become automatically the final decision of the Board. In that case, an order would be issued based on that decision; this order is not appealable to the Courts.

Appeals from Board Decisions

If the Department is still not satisfied with the final order of the Board after the Motion of Exception was filed and reviewed, they may appeal to the Courts. The Court appealed to will depend on whether or not the hearing was formal or informal. Since our hearing was informal, the Department appeals the final order of the Board de novo to the Superior Court. Appeals from the Superior Court are direct to the Supreme Court. If the hearing was formal, the appeal would be on the record directly to the Court of Appeals. Appeals from that Court are to the Superior Court.

TIME LINE



Declaratory Rulings

The Hearings Board also has the authority to issue declaratory rulings. (see RCW 34.04.080, Declaratory ruling by agency - Petition - Court review and WAC 371-08-240, Petitions for Declaratory Rulings). On the petition of any interested person, the Board may issue a declaratory ruling with respect to the applicability of any rule or regulation of the Department to any person, property, or state of facts alleged. The statute provides for general hearing procedures and the right of appeal to the Courts within 30 days of service of the final decision of the Board.

The entire Board considers the petition and must within a "reasonable" time act on it. Board action may take three forms. First, the Board may issue a nonbinding declaratory ruling. In this instance, the Board's ruling does not legally effect anyone; however, it does serve as an indicator of possible Board actions should the particular issue ever come before it in a hearing.

Second, the Board may notify the petitioner that no declaratory ruling is to be issued. This action would occur in those cases where the Board feels the petition is specious or beyond the authority of the Board.

And finally, the Board may set a reasonable time and place for a hearing or for submission of written evidence on the matter and give reasonable notification to the person of the time and place for such hearing or submission and of the issues involved. If this latter action is taken, the Board must within a "reasonable" time do one of three things. First, it can issue a nonbinding declaratory ruling. Second, it can notify the petitioner that a declaratory ruling will not be issued. Finally, it may issue a binding declaratory ruling. The point being that only after a hearing or submission of evidence may a binding declaratory ruling be issued. To date the Board has not been called upon to exercise this power.

Petitions for Rule Making

The Board also has the authority to hear petitions by any interested person for the promulgation, amendment, or repeal of any rule (see RCW 34.04.060 Petition for adoption, amendment, repeal of rule and WAC 371-08-245, Petitions for Rule Making). These petitions are handled in basically the same manner as petitions for declaratory judgments. The petitioner must set forth the rules he wishes to amend, promulgate or repeal, his reasons for such changes, and his interest in the subject matter of the rule.

The entire Board considers each petition and may order an informal hearing or meeting for further consideration and discussion of the petition. The Board must notify the petitioning person within a "reasonable" time of the deposition, if any, of the petition. Again this authority is based on a statute granting similar authority to all Washington State agencies. To date the Board has little experience with it.

Summary of Washington Hearings Board Experience

As of August 1, 1972, the Hearings Board had heard over 160 cases. The longest case lasted five days, with the average case taking approximately two days. The majority of cases concerned permit issues, with most appellates being individuals, small companies and etc. So far only two cases have been appealed to the Superior Court and only three cases to the Court of Appeals. Judge Hill stated that the Board was satisfied with its accomplishments to date. In fact, Judge Hill stated that the feeling in Washington was that the Board's role will be expanded in the future to that of an "Environmental Hearings Board" with jurisdiction over all state agency decisions having an environmental impact.

SHORELINES MANAGEMENT ACT

The 1971 Washington Legislature passed the Shorelines Management Act (R.C.W. Laws, 1st Ex Sess 1971, Ch. 180). This Act provided for the regulation of shorelines through a permit procedure. The permit process is handled by the local governmental units within whose boundaries the shoreline in question is located. As part of the permit process, the Legislature provided for an outside review board to hear appeals from permit procedures.

The Shorelines Hearings Board is basically the Pollution Control Hearings Board plus three additional members. Two members, one appointed by the Association of Washington cities and one appointed by the Association of County Commissioners, both serve at the pleasure of the Associations. The third member is the State Land Commissioner or his designee. The Chairman of the Pollution Control Hearings Board is also the Chairman of the Shorelines Hearing Board. In order to be final, a decision must be agreed to by at least four members of the Board.

Support services such as clerical, office space and etc. are provided by the Pollution Control Hearings Board. Members of the Shorelines Board receive standard compensation for expenses and travel.

Any person aggrieved by the granting or denying of a permit concerning the Shorelines of the state or the rescinding of a permit has the right to seek review by the Shorelines Hearing Board. A person must file a request for review with the Board within 30 days of receipt of final order. Additional copies must be filed with the DOE and the Attorney General's office. It is at this point that a slightly unusual procedure comes into play. Only those requests that the DOE or the Attorney General feel are valid will be certified for review to the Board. All other requests are denied administrative review. Of course, the requestor may seek review in the Superior Court under

any right to review available to him.

The DOE and the Attorney General both have the right to intervene in any action before the Board in order to protect the public interest. In fact, the DOE or the Attorney General may obtain review of any action of a local governmental unit by filing a written request with the Board and the appropriate local unit within 45 days from the date the final order was filed by the local unit. The actual procedures for review and appeal from Board actions are the same as those employed for the Pollution Control Hearings Board.

Local units of government may also use the Board to appeal any rules, regulations, guidelines, designations, or master programs for shorelines of the state adopted or approved by the DOE. Local units have 30 days from the date of adoption by the DOE to appeal; and, the Board must make a final decision within 60 days from the date of the Appeals Hearing.

The Statute also prescribes the Board's authority with regard to appeals of Master Plans by local units. If the Master Program (or portion thereof) in issue does not have statewide significance, the Board may find it invalid only for the following reasons:

- (1) it is clearly erroneous in light of the policy of the Shorelines Management Act; or
- (2) it constitutes an implementation of the Act in violation of constitutional or statutory provisions; or
- (3) it is arbitrary or capricious; or
- (4) it was developed without fully considering and evaluating all proposed master programs submitted to the department by the local unit; or
- (5) it was not adopted in accordance with required procedures.

If the Board finds the Program invalid for one or any of the above reasons, it shall remand the Master Program to DOE with a statement of the reasons

in support of its determination. After a thorough consultation with the affected local unit, it can direct DOE to adapt a new Master Program.

In cases where Master Programs with statewide significance are involved, the Board must approve the Master Program unless a local unit of government can by clear and convincing evidence and argument persuade the Board that the Master Program is inconsistent with the Policies of the Shorelines Management Act.

The statute also states that in order for local units to preserve their rights of review in the state Superior Courts they must first exhaust the remedy provided by the Shorelines Board. Furthermore, any petitions for court review must be filed within three months after the date of a final decision by the Shorelines Hearings Board.

To date the Shorelines Hearing Board has heard a total of 58 cases. In each case the full Board must sit in review. The majority of cases heard by the Board were those pertaining to petitions of persons appealing permit actions of local governments. Judge Hill said that at the present time Pollution Control Hearings Board members do not receive compensation while sitting on the Shorelines Board. Judge Hill expects this to be remedied by the upcoming Legislature.

Minnesota Environmental Hearings Board

Analysis of the Board Concept

The proposed Minnesota Environmental Hearings Board is based on the Washington Pollution Control Hearings Board. When discussing the Board's utility for Minnesota, certain basic assumptions or issues should be examined. The following section is a discussion of those assumptions.

The first assumption is that administrative remedies are preferable to judicial or court remedies. This assumption is founded in the principle that the resolution of conflicts or compromises without resort to the high cost sophisticated machinery and large amounts of time involved in judicial remedies is preferable. In state government the manifestation of this principle is the promulgation of administrative procedure acts. Generally these acts require that state agencies establish internal review procedures consistent with the act. Typically, this would mean that an individual affected by an action of an agency employee would have the right to appeal that action either to the employee's superior, the administrative head of the agency, a hearing officer employed by the agency or the governing board of the agency. In most instances court remedies cannot be utilized until all administrative remedies are exhausted, and in some cases court remedies are lost if timely appeals of final administrative decisions are not made (see the appendix for Minnesota's Administrative Procedure Act and Washington's Administrative Procedure Act.) Thus, it is recognized that actions of state agency employees should be administratively reviewable before an aggrieved individual is forced to seek more complex judicial remedies.

The second assumption is that the best type of administrative review is provided by knowledgeable but impartial bodies. It seems intuitively obvious

that better decisions should be made by a body or individual that has knowledge or expertise in the substantive issues before him. Agency personnel, or even a governing board of an agency would appear to have the necessary knowledge or expertise to review actions of that agency. However, qualified members of a Hearings Board would also have the necessary knowledge or expertise.* Furthermore, additional expertise would be acquired as the Board hears more appeals. The second part of this assumption deals with the issue of impartiality. It is here that one of the strongest arguments for the adoption of a Hearings Board over present internal agency review mechanisms lie. Under the present situation the agency occupies the conflicting roles of rule maker (legislator), rule enforcer and judge of its own actions. As a result of this freedom, the agency would be able to become an advocate of its position and policies without potential conflicts of interest arising. At the same time its advocacy would be reviewed or checked by appeal of agency actions to the independent Hearings Board.

The third assumption is that the Hearings Board does not add another layer of inefficient bureaucracy. Obviously, the effectiveness of the Hearings Board will depend, among other things, on the ableness of its members, the efficiency of its staff, and the number of appeals taken to it. Thus, at this point, the answer to this assumption is impossible to determine. In Washington it was a frequently voiced concern that the Hearings Board would result in long delays in the appeals process; however, most cases can be heard and a decision reached within 30 days if the parties so desire. Furthermore, judging from the few cases where appeals have been taken to the Courts from the Washington Hearings Board decisions, the Board concept can provide satisfactory remedies.

* Refer to the qualifications of the three members of the Washington Pollution Control Hearings Board as examples.

The last assumption is that the Hearings Board provides citizens with better access to agency decision than previously existed. Under the present situation there are a number of avenues open to citizens who wish to influence or change agency decisions. First, they may utilize the Administrative Procedure Act. The problem here as previously mentioned is that the individual must first seek redress from the very body whom they are claiming wronged them; and, second, if the remedy proves unsatisfactory, the individual must seek costly court remedies. Second, the citizen through informal mechanisms can bring pressure to bear on the chief administrator of the agency or on members of an advisory board where it exists. Third, pressure can be put on the individual or body that appoints the chief administrator or board. In all of these cases, the remedies are really not satisfactory. The Hearings Board, however, provides a formalized independent control over agency actions. Thus, any individual or group with a minimum of cost, time and expertise can through established procedures seek an impartial review of agency actions. The result is better access to agency decisions by all segments of society. Business groups can utilize the Board to act as a check on an overly zealous agency, while conservation groups can appeal actions of an overly lenient agency to the Board. Less affluent groups or individuals can take advantage of the Board to appeal agency actions in cases where they previously could not afford a court procedure. Once it is determined that the Hearings Board concept is useful, the issue becomes: "What should a Minnesota Environmental Hearings Board look like?"

Minnesota Proposal

The proposed Minnesota Environmental Hearings Board is based on the Washington Pollution Control Hearings Board. The Minnesota proposal is contained

in two model legislative acts. The first act establishes a Hearings Board under the present state agency organization, while the second act is similar to the first except it is drafted in conjunction with the creation of a Department of Environmental Resources.

The proposed Minnesota Hearings Board is a three-member independent agency of state government. Members are appointed by the Governor with the consent of the Senate. The Board as proposed has authority to hear appeals from actions of the Pollution Control Agency and the Department of Natural Resources. Additionally, the Board has authority to hear petitions for the repeal, amendment or promulgation of rules or regulations of either agency. Although not provided for specifically in either act, it is recognized that the Hearings Board provides an excellent review mechanism for other agencies and programs. For instance review of actions of an expanded Environmental Quality Council could be handled by the Hearings Board, as would the appeal of actions of an agency or agencies taken pursuant to some program or activity. The actual legislation with comments is contained in the appendix following this section of the report.

PROPOSED LEGISLATIVE ACT NO. 1

A bill for an act

relating to the creation of an environmental hearings board, as a separate agency of state government, and appropriating money therefor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. (LEGISLATIVE PURPOSE AND POLICY.) The purpose of the environmental hearings board is to provide for a more expeditious and efficient disposition of appeals with respect to the decisions and orders of the pollution control agency and department of natural resources.

(NOTE: It may well be that initially the board should be created as a review body for only the pollution control agency or department of natural resources. However, given the intent of this report to propose a single combined agency, both PCA and DNR have been included at this point.)

Sec. 2. (DEFINITIONS.) Subdivision 1. As used in section 1 to 17, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. 'Person' means any individual, partnership, corporation, or other organization or entity, public or private.

Subd. 3. 'Board' means the environmental hearings board.

Subd. 4. 'Department' means the Minnesota department of natural resources established by Minnesota Statutes, Chapter 84.

Subd. 5. 'Agency' means the Minnesota pollution control agency established by Minnesota Statutes, Section 116. 02.

Subd. 6. 'Commissioner' means the commissioner of the department of natural resources.

Subd. 7. 'Director' means the director of the pollution control agency.

Sec. 3. (ENVIRONMENTAL HEARINGS BOARD)

Subdivision 1. (ESTABLISHMENT: APPOINTMENTS.) An environmental hearings board, designated as the Minnesota environmental hearings board, is hereby established as an agency of state government. The board shall be comprised of three members appointed by the governor with the advice and consent of the senate.

(NOTE: (1) In order to retain its impartiality and visibility as a body, the board is created as a separate, wholly independent agency of state government.

(2) Due to the fact that much of the success of the board will depend on its members, especially if they are part-time, it is felt that appointment rather than election is the best selection process.

(3) At this time only a three member board has been designated, however, it may well be that additional members would be required in the future. I would only add that it would be advisable to use full time board members before increasing the total.)

Subd. 2. (QUALIFICATIONS.) Each member shall be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member of the board shall have been admitted to practice law in the state of Minnesota and engaged in the legal profession at the time of his appointment. No more than two members at the time of their appointment or during their term shall be members of the same political party. Each member shall not during his term of office as a board member be a candidate for, nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member of the board, nor shall he serve on or under any committee of any political party.

(NOTE: (1) Given its quasi-legal character, it seems desirable to require that at least one member of the board be of the legal profession.

(2) The next sentence is aimed at prohibiting a governor from stacking the deck with members of his political party. This provision is taken from the Washington Statute, and should be examined closely before including it in a final draft.

(3) The last sentence of this subdivision prohibits conflicts of interest, it may be that in the final draft this should be drawn more restrictively.)

Subd. 3. (TERMS; REMOVAL.) The terms of the first three members of the board shall be staggered so that one member shall be appointed to serve until July 1, 1975, one member until July 1, 1976, and one member until July 1, 1977. Thereafter all board members shall be appointed for a four year term, except that each member shall serve until his successor has been duly appointed and qualified. Board members may be removed only by the governor and only for cause in the manner provided in Minnesota Statutes, Chapter 351.

(NOTE: This subdivision is standard in format, a four term has been used here. It may well be that a longer term is more desirable. Washington uses a six year term. Naturally the longer the term the more insulated members are from the political process.)

Subd. 4. (VACANCIES.) If the office of any board member becomes vacant the vacancy shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. The office shall be deemed vacant under the conditions specified in Minnesota Statutes, Chapter 351.

Subd. 5. (BASIS OF OPERATION: COMPENSATION.) The board shall operate either on a part time or a full time basis, as determined by the governor. If it is determined that the board shall operate on a full time basis, each member of the board shall receive a yearly salary to be determined by the governor pursuant to Minnesota Statutes, Section 15A.12. If it is determined that the board shall operate on a part time basis, each member of the board shall receive compensation on the basis of ----- a day for each day spent in performance of his duties: Provided, that the compensation shall not exceed ----- in a calendar year. Each board member shall receive reimbursement for travel and other expenses incurred in the discharge of his duties in accordance

with the rules and regulations of the commissioner of the Minnesota department of administration.

(NOTE: (1) Due to the uncertainty of whether or not a full or part time board is necessary, this subdivision has given the governor the authority to so decide.

(2) It has also provided the governor with the authority to set the full time salaries of board members after consultation with the compensation review board.

(3) Washington allows a \$75 a day salary for part time members with a maximum of \$10,000 a year total part time compensation. It may be that in the final draft that the part time salary and total compensation should be left to the governor, etc.

(4) The last sentence allows for reimbursements for travel and other expenses of board members in accordance with the department of administration. Again with the uncertainty of costs it is desirable to be as flexible as possible.)

Subd. 6. (CHAIRMAN.) The board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman and shall at least biennially thereafter meet and elect a chairman. The chairman shall preside at all meetings of the board, if present, and shall perform all other duties and functions usually incumbent upon a chairman. The chairman may be paid a compensation in addition to his compensation as a board member as the governor shall determine.

(NOTE: Again this subdivision is fairly straight forward, the only wrinkle is allowing the governor to compensate the chairman for his duties as chairman.)

Subd. 7. (PRINCIPAL OFFICE, QUORUM, ACTION BY ONE MEMBER UPON AUTHORIZATION, BOARD POWERS AND DUTIES.) The principal office of the board shall be at the state capitol, but it may sit or hold hearings at any other place in the state. A majority of the board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position of the board be vacant. One or more members may hold hearings and take testimony to be reported for action

by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or otherwise provided in law.

(NOTE: (1) The first sentence of this subdivision allows the board to operate as a traveling court, moving from site to site hearing appeals.

(2) The provision allowing for a single member to hold hearings and take testimony allows the board to conduct three separate hearings at the same time.)

Sec. 4. (BOARD EMPLOYEES.) The board may appoint, discharge and fix the compensation of an executive secretary, a clerk, and such other clerical, professional and technical assistants as may be necessary, or may contract for required services.

(NOTE: The reason this section allows for so much flexibility in the staffing of the board is that it is extremely difficult to predict exactly what its' needs are going to be.)

Sec. 5. (BOARD FINDINGS.) The board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decisions shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

(NOTE: This section requires that all actions of the board be based on findings of fact and a written decision. It also requires that all decisions must be signed by at least two board members and be filed before they become effective.)

Sec. 6. (BOARD JURISDICTION.) Subd. 1. (APPEALS FROM DECISIONS OF THE AGENCY OR DEPARTMENT.) The board shall only have jurisdiction to hear and decide appeals from the decisions of the agency or the department when the decisions concern matters within the jurisdiction of the board as provided in sections 1 to 17 or as provided in any future act or law granting the board additional jurisdiction.

(NOTE: This subdivision limits jurisdiction of the board to actions taken either by PCA or DNR as provided explicitly in this act, however, it does allow for future acts or laws to grant additional jurisdiction to the board over actions taken either by PCA or DNR.)

Subd. 2. (ISSUANCE, MODIFICATION, TERMINATION OF PERMITS, LICENSES, AS ORDER.) The board shall also have jurisdiction to hear and decide appeals from any person aggrieved by an order issued by the agency or department with respect to a violation of any rule or regulation adopted by the agency or the department or of any law within the jurisdiction of either the agency or the department. The issuance, modification or termination of any permit or license by either the agency or the department shall be deemed to be an order for the purposes of sections 1 to 17.

(NOTE: This subdivision gets into the exact nature of the boards jurisdiction over PCA and DNR actions. It grants the board review authority over almost all actions of PCA or DNR as they effect persons. Obviously in the final draft of this bill certain actions or orders may be excluded from board review. It would be in this subdivision that such limitations would be spelled out.)

Sec. 7. (BOARD HEARING AUTHORITY.) Subdivision 1. (AUTHORITY EXCLUSIVE.) Notwithstanding any other provisions of law to the contrary, the agency and the department are hereby prohibited from conducting appeal hearings on violations of any rule or regulation made by either the agency or the department or its director or commissioner, or on the violations of any law, or on the issuance, modification or termination of any permit or license within the jurisdiction of either the agency or the department. All petitions for hearings with respect to the violations shall be heard by the board.

(NOTE: The purpose of this subdivision is to prohibit either PCA or DNR from conducting administrative hearings or reviews on violations of rules, regulations or laws within the jurisdiction of either agency. In other words the board now has exclusive review hearing authority in those areas where it has jurisdiction over either PCA or DNR actions. This does not mean that either agency is prohibited from conducting hearings to determine what agency actions should be in a particular case, it is only after a final decision

has been made by the agency that it can no longer conduct hearings on appeal. Thus, PCA or DNR no longer have authority to conduct administrative appeal hearings on their own actions.)

Subd. 2. (AGENCY OR DEPARTMENT ORDERS FINAL UNLESS APPEAL TO BOARD.)

An order issued by either the agency or the department shall become final unless, no later than 30 days after the date that the notice and order are served, the person aggrieved by the order appeals to the board as provided for in sections 1 to 17.

(NOTE: This subdivision establishes a 30 day time limit for appeals of orders issued by either PCA or DNR. Failure to appeal within the 30 days would result in a loss of administrative remedy and would presumably also result in loss of court remedies.)

Sec. 8. (FORMAL OR INFORMAL HEARING.) In all appeals over which the board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, the election to be made according to rules of practice and procedure to be promulgated by the board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of the parties elects a formal hearing, a formal hearing shall be granted.

(NOTE: This section allows parties to elect either informal or formal hearings as they so desire, PCA or DNR also have the option to elect an informal or formal hearing, however, this right is granted specifically in section 14.)

Sec. 9 (INFORMAL HEARINGS, BOARD POWERS.) In all appeals involving an informal hearing, the board may administer oaths, take depositions, and procure by its subpoena the attendance of witnesses and the production of relevant books and papers. In the case of appeals as provided in sections 1 to 17 the board or any member thereof may obtain the assistance, including the making of field investigations, from the staff of the agency or the department as the board or any member thereof, may deem necessary or appropriate: Provided, that any communication, oral, or written, from the staff of the

agency or the department to the board shall be presented only in an open hearing.

(NOTE: (1) The first sentence in this section grants the board the necessary procedural powers to conduct hearings.

(2) The second sentence allows the board to make use of the skills and information contained in either PCA or DNR with the restriction that any information so obtained must be presented in an open forum).

Sec. 10. (FORMAL HEARINGS, BOARD POWERS.) In all appeals involving a formal hearing the board may administer oaths, take depositions and procure by its subpoena the attendance of witness and the production of relevant works and papers; and the board and each member thereof shall be subject to all duties imposed upon, and shall have all powers granted to an agency by those provisions of Minnesota Statutes, Chapter 15 relating to contested cases. In the case of appeals within the scope of the provisions of sections 1 to 17, the board, or any member thereof, may obtain the assistance, including the making of field investigations, from the staffs of either the agency or the department: Provided, that any communication oral, or written, from the staff of the agency or the department to the board shall be presented only in an open hearing.

(NOTE: This section is similar to section 9 except it deals with formal hearings. The only addition is the provision imposing all the powers and duties of agencies dealing with contested cases on the board. Minnesota Statutes, 15.0418, 15.0419, 15.0241, 15.0422.

Sec. 11. (RULE REVIEW.) Subdivision 1. (PETITION FOR ADOPTION OF RULE.) Any petitions requesting the adoption, suspension, amendment or repeal of any rule of either the agency or the department made pursuant to Minnesota Statutes, Chapter 15 shall now be made only to the board, pursuant to rules adopted by the board as to the form for such petitions and the procedure for their submission, consideration, and disposition.

(NOTE: This subdivision transfers the power to hear petitions granted by Minnesota Statutes, Section 15.0415 to agencies to the board.

Subd. 2. (DETERMINATION OF VALIDITY OF RULE.) Any petition for a declaratory judgement on the validity of any rule of either the agency or the department addressed to the district court pursuant to Minnesota Statutes, Chapter 15 shall now be addressed to the board: Provided, that nothing herein shall prohibit petitioner from appealing the board determination to the district court.

(NOTE: this subdivision transfers the power (Minnesota Statutes, Section 15.0416) to make declaratory judgments on the validity of any rule of PCA or DNR from the district court to the board. The board's decision in this matter may be appealed to the district court in the same manner as any other decision of the board)

Sec. 12. (PROCEEDINGS CONDUCTED IN ACCORDANCE WITH PUBLISHED BOARD RULES AND PROCEDURES.) All proceedings, including both formal and informal hearings, before the board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The board shall publish the rules and arrange for the reasonable distribution thereof.

Sec. 13. (JUDICIAL REVIEW.) Judicial review of a decision of the board is de novo except when the decision is rendered pursuant to a formal hearing elected under the provisions of sections 1 to 17, in which event judicial review may be obtained only pursuant to Minnesota Statutes, Section 15.0424. The director of the agency or the commissioner of the department has the same right of review from a decision of the board made pursuant to sections 1 to 17 as does any person.

(NOTE: (1) Judicial review of board decisions based on informal hearings is de novo, while, judicial review of decisions based on formal hearings must follow the procedures outlined in Minnesota Statutes, Section 15.0424, Judicial Review of Agency Decisions.

(2) The last sentence gives PCA or DNR the same right of review of board decisions as any other person has.)

Sec. 14 (APPEAL FROM BOARD DECISION.) Subd. 1. (RIGHT TO APPEAL.) Within 30 days after the final decision and order of the board upon an appeal has been communicated to the interested parties, or within 30 days after an appeal has been denied after an informal hearing or formal hearing, an interested party aggrieved by the decision and order of the board may appeal to the district court.

(NOTE: This subdivision grants the right to appeal board decision to the district court to any interested parties. It also sets a 30 day time limit on such appeals.)

Subd. 2. (APPEAL FOLLOWING INFORMAL HEARING.) In all appeals involving a decision or an order of the board after an informal hearing the petition shall be filed in the district court for the county of the petitioner's residence or principal place of business, or for Ramsey county. Such appeal may be perfected by filing with the clerk of district court a notice of appeal, and by serving a copy thereof by mail, or personally on either the director of the agency or the commissioner of the department. The board shall serve upon the appealing party, on the director of the agency or the commissioner of the department, as the case may be, and on any other party appearing at the board's proceeding and file with the clerk of the court before trial, a certified copy of the board's decision and order. No bond shall be required on appeals to the district court or on appeals to the supreme court unless specifically required by the judge of the district court.

(NOTE: (1) This subdivision details the appeal procedure after a decision of the board based on an informal hearing. It requires the filing of a petition, by the appealing party, with the clerk of district court and serving a copy with either PCA or DNA.

(2) Additionally it requires the board to file copies of its decision with all concerned.)

Subd. 3. (APPEAL FOLLOWING INFORMAL HEARING.) In all appeals involving a decision or an order of the board after an informal hearing, the interested

party aggrieved by the decision and order of the board may appeal to the district court pursuant to the provisions of Minnesota Statutes, Chapter 15. The appeal may be perfected by filing with the clerk of the district court a notice of appeal, and by serving a copy thereof by mail or personally on either the director of the agency or the commissioner of the department, as the case may be. The board shall serve upon the appealing party, the director or commissioner and any other party appearing at the board's proceeding, and file with the clerk of the district court before trial a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order which shall become the record in a case. No bond shall be required on appeals to the district court or supreme court unless specifically required by the judge of the district court.

(NOTE: (1) This subdivision is similar to subdivision 2 except this one deals with appeal procedures after formal hearing and decision. Here all appeals are required to conform with the requirements of Chapter 15.

(2) In this case the board is required to serve on all parties a certified copy of the board's record (as defined in this subdivision).)

Sec. 15. (APPEAL PROCEDURE, ELECTION FORMAL OR INFORMAL HEARING.) Any person having received notice of a denial of a petition, a notice of determination, notice of or an order made by the agency or the department under the provisions of sections 1 to 17 may appeal, within 30 days from the date of the notice of such denial, order or determination to the board. The appeal shall be perfected by serving a copy of the notice of appeal upon the agency or the department, as the case may be, within the time specified herein and by filing the original thereof with proof of service with the clerk of the board. If the person intends that the hearing before the board be a formal one, the notice of appeal shall so state. In the event that the notice of appeal does not so state, the hearing shall be an informal one. Notwithstanding

the preceding provisions of section 15 nothing shall prevent the agency or the department, as the case may be, within 10 days from the date of its receipt of the notice of appeal, from filing with the clerk of the board notice of its intention that the hearing be a formal one.

(NOTE: (1) This section deals with the procedure for appealing actions of PCA or DNR to the board.

(2) It also allows for selection of an informal or formal hearing by any party including PCA or DNR.

Sec. 16. (ADMINISTRATIVE PROCEDURE ACT TO APPLY TO APPEAL OF BOARD RULES AND REGULATIONS.) Minnesota Statutes, Chapter 15, shall apply to the appeal of rules and regulations adopted by the board to the same extent as it applies to review of rules and regulations adopted by any other agency of state government.

Sec. 17. (APPROPRIATIONS.) There is appropriated to the environmental hearings board from the general fund in the state treasury \$----- for carrying out the provisions of section 1 to 17.

(NOTE: This is the standard appropriations clause. I put it in only to ensure that the issue of funding will be dealt with in this legislation. Obviously the proper method and level of funding will depend on a variety of factors beyond the scope of this study.)

Proposed Legislative Act No. 2

A bill for an act

relating to the creation of an environmental hearings board, as a separate agency of state government, and appropriating money therefor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. (LEGISLATIVE PURPOSE AND POLICY.) The purpose of the environmental hearings board is to provide for a more expeditious and efficient disposition of appeals with respect to the decisions and orders of the department of environmental resources.

Sec. 2. (DEFINITIONS.) Subdivision 1. As used in section 1 to 17, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. 'Person' means any individual, partnership, corporation, or other organization or entity, public or private.

Subd. 3. 'Board' means the environmental hearings board.

Subd. 4. 'Department' means the Minnesota department of environmental resources established by Minnesota Statutes, Chapter ___.

Subd. 5. 'Commissioner' means the commissioner of the department of environmental resources.

Sec. 3. (ENVIRONMENTAL HEARINGS BOARD.) Subdivision 1. (ESTABLISHMENT: APPOINTMENTS.) An environmental hearings board, designated as the Minnesota environmental hearings board, is hereby established as an agency of state government. The board shall be comprised of three members appointed by the governor with the advice and consent of the senate.

Subd. 2. (QUALIFICATIONS.) Each member shall be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member of the board shall have been admitted to practice law in the state of Minnesota and engaged in the legal profession at the time of his appointment. No more than two members at the time of their appointment or during their term shall be members of the same political party. Each member shall not during his term of office as a board member be a candidate for, nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member of the board, nor shall he serve on or under any committee of any political party.

Subd. 3. (TERMS: REMOVAL.) The terms of the first three members of the board shall be staggered so that one member shall be appointed to serve until July 1, 1975, one member until July 1, 1976, and one member until July 1, 1977. Thereafter all board members shall be appointed for a four year term, except that each member shall serve until his successor has been duly appointed and qualified. Board members may be removed only by the governor and only for cause in the manner provided in Minnesota Statutes, Chapter 351.

Subd. 4. (VACANCIES.) If the office of any board member becomes vacant the vacancy shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. The office shall be deemed vacant under the conditions specified in Minnesota Statutes, Chapter 351.

Subd. 5. (BASIS OF OPERATION: COMPENSATION.) The board shall operate either on a part time or a full time basis, as determined by the governor. If it is determined that the board shall operate on a full time

basis, each member of the board shall receive a yearly salary to be determined by the governor pursuant to Minnesota Statutes, Section 15A.12. If it is determined that the board shall operate on a part time basis, each member of the board shall receive compensation on the basis of ----- a day for each day spent in performance of his duties: provided, that the compensation shall not exceed ----- in a calendar year. Each board member shall receive reimbursement for travel and other expenses incurred in the discharge of his duties in accordance with the rules and regulations of the commissioner of the Minnesota department of administration.

Subd. 6. (CHAIRMAN.) The board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman and shall at least biennially thereafter meet and elect a chairman. The chairman shall preside at all meetings of the board, if present, and shall perform all other duties and functions usually incumbent upon an officer. The chairman may be paid a compensation in addition to his compensation as a board member as the governor shall determine.

Subd. 7. (PRINCIPAL OFFICE, QUORUM, ACTION BY ONE MEMBER UPON AUTHORIZATION, BOARD POWERS AND DUTIES.) The principal office of the board shall be at the state capitol, but it may sit or hold hearings at any other place in the state. A majority of the board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position of the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or otherwise provided in law.

Sec. 4. (BOARD EMPLOYEES.) The board may appoint, discharge and fix the compensation of an executive secretary, a clerk, and such other clerical, professional and technical assistants as may be necessary, or may contract for required services.

Sec. 5. (BOARD FINDINGS.) The board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decisions shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

Sec. 6. (BOARD JURISDICTION.) Subd. 1. (APPEALS FROM DECISIONS OF THE DEPARTMENT.) The board shall only have jurisdiction to hear and decide appeals from the decisions of the department when the decisions concern matters within the jurisdiction of the board as provided in sections 1 to 17 or as provided in any future act or law granting the board additional jurisdiction.

Subd. 2. (ISSUANCE, MODIFICATION, TERMINATION OF PERMITS, LICENSES, AS ORDER.) The board shall also have jurisdiction to hear and decide appeals from any person aggrieved by an order issued by the department with respect to a violation of any rule or regulation adopted by the department or of any law within the jurisdiction of the department. The issuance, modification or termination of any permit or license by the department shall be deemed to be an order for the purposes of sections 1 to 17.

Sec. 7. (BOARD HEARING AUTHORITY.) Subdivision 1. (AUTHORITY EXCLUSIVE.) Notwithstanding any other provisions of law to the contrary, the department is hereby prohibited from conducting appeal hearings on violations of any rule or regulation made by department or its commissioner, or on the violations of any law, or on the issuance, modification or

termination of any permit or license within the jurisdiction of the department. All petitions for hearings with respect to the violations shall be heard by the board.

Subd. 2. (DEPARTMENT ORDERS FINAL UNLESS APPEAL TO BOARD.) An order issued by the department shall become final unless, no later than 30 days after the date that the notice and order are served, the person aggrieved by the order appeals to the board as provided for in sections 1 to 17.

Sec. 8. (FORMAL OR INFORMAL HEARING.) In all appeals over which the board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, the election to be made according to rules of practice and procedure to be promulgated by the board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of the parties elects a formal hearing, a formal hearing shall be granted.

Sec. 9. (INFORMAL HEARINGS, BOARD POWERS.) In all appeals involving an informal hearing, the board may administer oaths, take depositions, and procure by its subpoena the attendance of witnesses and the production of relevant books and papers. In the case of appeals as provided in sections 1 to 17 the board or any member thereof may obtain the assistance, including the making of field investigations, from the staff of the department as the board or any member thereof, may deem necessary or appropriate: Provided, that any communication, oral, or written, from the staff of the department to the board shall be presented only in an open hearing.

Sec. 10. (FORMAL HEARINGS, BOARD POWERS) In all appeals involving a formal hearing the board may administer oaths, take depositions and procure by its subpoena the attendance of witness and the production

of relevant works and papers; and the board and each member thereof shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of Minnesota statutes, Chapter 15 relating to contested cases. In the case of appeals within the scope of the provisions of sections 1 to 17, the board, or any member thereof, may obtain the assistance, including the making of field investigations, from the staffs of the department: Provided, that any communication oral, or written, from the staff of the department to the board shall be presented only in an open hearing.

Sec. 11. (RULE REVIEW.) Subdivision 1. (PETITION FOR ADOPTION OF RULE.) Any petitions requesting the adoption, suspension, amendment or repeal of any rule of the department made pursuant to Minnesota Statutes, Chapter 15 shall now be made only to the board, pursuant to rules adopted by the board as to the form for such petitions and the procedure for their submission, consideration, and disposition.

Subd. 2. (DETERMINATION OF VALIDITY OF RULE.) Any petition for a declaratory judgment on the validity of any rule of the department addressed to the district court pursuant to Minnesota Statutes, Chapter 15 shall now be addressed to the board; Provided, that nothing herein shall prohibit petitioner from appealing the board determination to the district court.

Sec. 12. (PROCEEDINGS CONDUCTED IN ACCORDANCE WITH PUBLISHED BOARD RULES AND PROCEDURES.) All proceedings, including both formal and informal hearings, before the board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The board shall publish the rules and arrange for the reasonable distribution thereof.

Sec. 13. (JUDICIAL REVIEW.) Judicial review of a decision of the board is de novo except when the decision is rendered pursuant to a formal hearing elected under the provisions of sections 1 to 17, in which event judicial review may be obtained only pursuant to Minnesota Statutes, Section 15.0424. The commissioner of the department has the same right of review from a decision of the board made pursuant to sections 1 to 17 as does any person.

Sec. 14. (APPEAL FROM BOARD DECISION.) Subd. 1. (RIGHT TO APPEAL.) Within 30 days after the final decision and order of the board upon an appeal has been communicated to the interested parties, or within 30 days after an appeal has been denied after an informal hearing or formal hearing, an interested party aggrieved by the decision and order of the board may appeal to the district court.

Subd. 2. (APPEAL FOLLOWING INFORMAL HEARING.) In all appeals involving a decision or an order of the board after an informal hearing the petition shall be filed in the district court for the county of the petitioner's residence or principal place of business, or for Ramsey county. Such appeal may be perfected by filing with the clerk of district court a notice of appeal, and by serving a copy thereof by mail, or personally on either the director of the agency or the commissioner of the department. The board shall serve upon the appealing party, the commissioner of the department, and on any other party appearing at the board's proceeding and file with the clerk of the court before trial, a certified copy of the board's decision and order. No bond shall be required on appeals to the district court or on appeals to the supreme court unless specifically required by the judge of the district court.

Subd. 3. (APPEAL FOLLOWING FORMAL HEARING) In all appeals involving a decision or an order of the board after a formal hearing, the interested party aggrieved by the decision and order of the board may appeal to the district court pursuant to the provisions of Minnesota Statutes, Chapter 15. The appeal may be perfected by filing with the clerk of the district court a notice of appeal, and by serving a copy thereof by mail or personally on the commissioner of the department. The board shall serve upon the appealing party, the commissioner and any other party appearing at the board's proceeding, and file with the clerk of the district court before trial a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order which shall become the record in a case. No bond shall be required on appeals to the district court or supreme court unless specifically required by the judge of the district court.

Sec. 15 (APPEAL PROCEDURE, ELECTION FORMAL OR INFORMAL HEARING.) Any person having received notice of a denial of a petition, a notice of determination, notice of or an order made by the agency or the department under the provisions of sections 1 to 17 may appeal, within 30 days from the date of the notice of such denial, order or determination to the board. The appeal shall be perfected by serving a copy of the notice of appeal upon the department, within the time specified herein and by filing the original thereof with proof of service with the clerk of the board. If the person intends that the hearing before the board be a formal one, the notice of appeal shall so state. In the event that the notice appeal does not so state, the hearing shall be an informal one. Notwithstanding the preceding

provisions of section 15 nothing shall prevent the department within 10 days from the date of its receipt of the notice of appeal, from filing with the clerk of the board notice of its intention that the hearing be a formal one.

Sec. 16. (ADMINISTRATIVE PROCEDURE ACT TO APPLY TO APPEAL OF BOARD RULES AND REGULATIONS.) Minnesota Statutes, Chapter 15, shall apply to the appeal of rules and regulations adopted by the board to the same extent as it applies to review of rules and regulations adopted by any other agency of state government.

Sec. 17. (APPROPRIATIONS.) There is appropriated to the environmental hearings board from the general fund in the state treasury \$----- for carrying out the provisions of section 1 to 17.