

ENVIRONMENTAL MANAGEMENT

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
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REORGANIZING VIRGINIA'S ENVIRONMENTAL AGENCIES

	Page
Synopsis of the Report	
I. General Remarks	1
A. Background	1
B. Mandate	2
C. Proceedings of the Committee	3
II. Findings	3
A. Problems Summarized	3
B. Reorganization and its Objectives	4
III. Recommendations	4
A. Reorganization of Structure	4
B. Reorganization of Leadership	5
C. Reorganization of Permit Procedure	5
D. Continuation of Study	6
IV. Exposition	6
A. Location under Secretary of Commerce and Resources	6
B. Consolidation	6
C. Division of Environmental Quality	8
D. Environmental Quality Board	9
E. Division of Natural Resources	9
F. Natural Resources Board	10
G. Division of Game and Inland Fisheries	10
H. Board of Game and Inland Fisheries	10
I. Division of Marine Resources	11
J. Board of Marine Resources	11
K. Supervision of Environmental Management	12
L. Consolidated Permit Procedure	12
M. Environmental Appeals Board	12
N. Continuation of Study	13

COMMITTEE ON ENVIRONMENTAL MANAGEMENT

Report of the

Virginia Advisory Legislative Council

Richmond, Virginia
January, 1973

TO: HONORABLE LINWOOD HOLTON, *Governor of Virginia*

and

GENERAL ASSEMBLY OF VIRGINIA

I. GENERAL REMARKS

A. *Background.* One important by-product of the growth of prosperity in the Commonwealth during the past two decades has been an increased concern among Virginians over the quality of their lives and their surroundings. In response to this concern the General Assembly has enacted major new legislation to preserve Virginia's natural beauty and to maintain a wholesome environment for its citizens. Stricter standards have been established to protect the purity of our air and water. A State Water Control Board was established in 1946 and an Air Pollution Control Board was created in 1966. Provision was made in 1972 to safeguard Virginia's wetlands from unwarranted encroachments. In addition, the 1972 General Assembly gave statutory recognition to the Council on the Environment and added the Chairman of the State Water Control Board and Air Pollution Board as members of the five man agency charged with the responsibility of coordinating agency activities. Programs for the reclamation of strip mines have been undertaken, as have studies for developing improved ways to dispose of solid waste.

The impetus for intensified environmental protection has come from without as well as within. Polluted air, rivers, and coastal waters know no state boundaries, and Virginia has perforce joined with her neighbors to develop mutually acceptable standards for these media. The federal government, too, has influenced the Commonwealth's approach to environmental protection. Substantial sums have been set aside by the Congress for the use of the State in pollution abatement programs. Such monies, however, are not always allocated without strings, but require in certain instances compliance with specified preconditions before being made available.

The cumulative effect of these recent developments has been to place new demands and burdens on Virginia's existing agencies concerned with the management of the environment. Old tasks have been given new importance, while new tasks have been added to an expanding range of institutional responsibilities. Comprehensive planning and the achievement of minimum standards are now required of practically every agency seeking federal financial support. To meet such prerequisites, the State has had to increase its own appropriations, to appoint new officials, and to create new office space. Since 1971, for example, the number of persons employed in Virginia for air pollution control alone has quadrupled. Since 1965, the professional staff of the now combined State Water Control Board has also quadrupled from fifty-four to two hundred three. It has been estimated by the State Water Control Board that because of new obligations imposed by the Federal Water Pollution Control Amendments

of 1972 an additional two hundred sixty-six people will be needed in the Water Pollution Control program administered by the Commonwealth. The Marine Resources Commission is no longer responsible merely for the supervision of Virginia's shellfish industry (its traditional role), but of State bottomland and wetlands as well. In the process, the Commission is required to rule on applications for many different kinds of permits and to comment on numerous other licensing requests administered by other agencies. (A more detailed account of these and other developments is included in § IV of this report.)

As a consequence of this remarkable expansion of administrative responsibilities, the Commonwealth's existing agencies have become, in a word, overloaded. Administrative delays have become the rule rather than the exception; lines of communication have broken down within and between agencies; fragmentation and duplication of functions have wastefully drained State revenues; and perhaps most seriously, a number of critical environmental tasks simply have not been performed.

B. *Mandate.* The foregoing developments have not escaped the attention of the Virginia General Assembly. As early as 1971 the legislature directed the Virginia Advisory Legislative Council "to study the desirability of establishing a single State agency to regulate and control all environmental pollution." (H.J.R. 35 of 1970)

The Council returned a preliminary report on this subject in January of 1972, with the recommendation that:

The study should be continued until both the Governor's Council on the Environment and the Solid Wastes Disposal Commission make their final report. (p. 2)

After extensive consideration of the matter during its 1972 session, the General Assembly resolved to accept this recommendation. In House Joint Resolution No. 50 of 1972, the Council

to continue its study of environmental problems including a comprehensive Environmental Study concerning all aspects of governmental management of environmental problems.

The Resolution went on to stipulate that:

the Council shall identify and study environmental problems now unregulated by the State government but which may be expected to be regulated in whole or in part at the State level.

It was further declared that:

The report of the Council shall contain a certain specific proposal and alternatives within the scope of its study for the management of environmental problems at State level and those areas where State management efforts currently exist. In this regard, the report shall contain, but not be limited to, proposals and alternatives relating to reorganization of State agencies to heighten management effectiveness and innovate approaches to environmental problems now dealt with, directly or indirectly, at the State level. (For the full text of H.J.R. 50, see Appendix "A".)

Pursuant to this resolution, the Council reappointed a select Committee on Environmental Management from among its membership to continue the investigation. Stanley A. Owens of Manassas was designated as Chairman of the Committee, and he was joined by Russell M. Carneal of Williamsburg, Lewis A. McMurran, Jr. of Newport News, William V. Raw-

lings of Capron, James M. Thomson of Alexandria, James C. Turk of Radford and Edward E. Willey of Richmond all from the 1970 Committee except Mr. Owens and Senator Rawlings. Subsequently, Senator Turk resigned from the Committee after his appointment to a federal judgeship.

C. Proceedings of the Committee. Recognizing the urgency of its assignment, the Committee on Environmental Reorganization met at regular intervals throughout the summer and autumn of 1972. With the assistance of consultants from a variety of areas and institutions, the Committee evaluated the present operation of Virginia's environmental agencies, identified major sources of delay and inefficiency, reviewed alternative modes of reorganization as undertaken in other states, and considered reorganization possibilities most appropriate to the needs of the Commonwealth.

In connection with their deliberations, the members heard from representatives of practically every relevant state agency, including the Air Pollution Control Board, the State Water Control Board, the Department of Conservation and Economic Development, the Commission of Game and Inland Fisheries, the Division of State Planning and Community Affairs, the Marine Resources Commission, the Department of Health, the Department of Agriculture and Commerce, the Governor's Council on the Environment, and the Office of the Attorney General. The Secretaries of Administration (T. Edward Temple), of Commerce and Resources (Maurice B. Rowe), and of Human Resources (Otis L. Brown), kindly offered their comments and suggestions. Remarks were also solicited from the Virginia Manufacturer's Association, the Virginia Institute of Marine Science and the Solid Wastes Study Commission.

A comparative review of environmental reorganization in other states was made possible through the aid of Mrs. Elizabeth Haskell, principal author of a major report on the subject, Mr. J. Donald Judy of the Council of State Governments in Lexington, Kentucky, and through supplementary materials furnished by the Attorneys General of twenty-seven different states.

Continuing assistance was provided by Dr. Joseph A. Miri of the College of William and Mary, who was retained as Consultant and undertook a study of environmental problems in the Commonwealth. Also assisting were Gerald P. McCarthy of the Governor's Council on the Environment and Deputy Attorney General Gerald L. Baliles and Mr. Richard G. Menaker and the staff of the Attorney General's Office.

The Virginia Advisory Legislative Council and the Division of Statutory Research and Drafting made staff and facilities available to carry out this study. Robert B. Cousins, Jr., and G. William White, Jr., of Statutory Research, were assigned as Counsel to assist the members and the study Committee.

II. FINDINGS

A. Problems Summarized.

During the course of its inquiry, the Committee was made aware of a wide range of deficiencies, both specific and general, which have impaired the effectiveness of environmental management in Virginia. These include (in broad outline): (1) The duplication of environmental functions among several different administrative agencies. (2) The fragmentation of properly unified environmental functions among several different administrative agencies. (3) The increased involvement of boards

and commissions in the day-to-day management of agencies, largely due to insufficient delineation of responsibilities. (4) The neglect of certain critical regulatory functions (such as on-site inspection of construction projects for new sewage treatment plants) because of an absence of coordinating supervision. (5) The increase in the number of steps and delays in administrative action on permit applications, due to bureaucratic red tape, the inefficiencies of committee procedure, and a lack of accountability for final decisions.

B. *Reorganization and its Objectives.*

Careful consideration of these problems and of alternative means of resolving them led the Committee to conclude, without reservation, that Virginia's administrative agencies for environmental management must be substantially reorganized.

The Committee further concluded that such reorganization, no matter what form it finally takes, should be directed towards the following objectives: (1) To ensure the accessibility of the State's overall environmental programs and quality. (2) To increase coordination among the State's environmental programs and functions with respect to planning, research, policy-making, and policy implementation. (3) To provide for a more nearly unified policy-making and management. (4) To provide for more efficient and effective methods of resolving conflicts and balancing competing environmental uses. (5) To streamline and expedite procedures for the numerous environmentally-related permits and reviews. (6) To ensure that environmental values are pursued and protected by all State agencies.

III. RECOMMENDATIONS

With these findings in mind, the Committee on Environmental Management examined a variety of alternative approaches to environmental reorganization. Developments in other states have been considered, and proposals have been reviewed in terms of the Commonwealth's own particular needs and circumstances. The Committee after intensive study, made its recommendations to the Council. The Council now makes its recommendations as follow:

A. *Reorganization of Administrative Structure.*

It is recommended: (1) that the reorganization of the Commonwealth's environmental agencies should proceed within the general jurisdiction of the Secretary of Commerce and Resources; (2) that the present Department of Conservation and Economic Development should serve as the principal locus of reorganization; (3) that the name of the reorganized Department should be changed to "Department of Conservation, Development and Natural Resources"; (4) that the Department of Conservation, Development and Natural Resources should be internally organized in four distinct divisions—*viz.* The Division of Environmental Quality, The Division of Natural Resources, The Division of Game and Inland Fisheries and The Division of Marine Resources; (5) that the functions of the present State Water Control Board and Air Pollution Board and the solid waste responsibilities of the present Bureau of Solid Wastes and Vector Control in the Department of Health should be transferred as Bureaus to the proposed Division of Environmental Quality; (6) that the functions handled by the Department of Conservation and Economic Development as it presently exists should be made the responsibility of the proposed Division of Natural Resources; (7) that the proposed Division of Game and Inland Fisheries should assume the func-

tions presently handled by the Commission of Game and Inland Fisheries; (8) that the proposed Division of Marine Resources should assume the functions presently handled by the Marine Resources Commission.

B. Reorganization of Leadership.

It is further recommended: (1) that responsibility for the supervision and coordination of the proposed Department of Conservation, Development and Natural Resources should be vested in a single Department Commissioner; (2) that the Commissioner should report to the Secretary of Commerce and Resources; (3) that each of the four divisions of the proposed Department of Conservation, Development and Natural Resources should be under the direction of a Director, who should be accountable to the Commissioner of the Department of Conservation, Development and Natural Resources; (4) that responsibility for the making of regulations and the formulations of general policy for the Division of Environmental Quality should be vested in a seven member Environmental Quality Board, consisting of the Commissioner of Health and six citizens appointed by the Governor and confirmed by the General Assembly; (5) that the first members of the Environmental Quality Board should be the three most senior members (by tenure) of the present Air Pollution Control Board, the three most senior members (by tenure) of the State Water Control Board, and the Commissioner of Health; (6) that responsibility for the making of regulations and the formulation of the general policy for the Division of Natural Resources should be vested in a Natural Resources Board, consisting of members appointed by the Governor and confirmed by the General Assembly; (7) that the first members of the Natural Resources Board should be the entire membership of the present Board of the Department of Conservation and Economic Development; (8) that responsibility for the making of regulations and the formulation of general policy (including the establishment of hunting and fishing seasons) for the Division of Game and Inland Fisheries should be vested in a division-level board consisting of the present citizen-appointees to the Commission of Game and Inland Fisheries as presently constituted; (9) that responsibility for the making of regulations and the formulation of general policy for the Division of Marine Resources should be vested in a division-level board consisting of the citizen-appointees to the Marine Resources Commission as presently constituted.

C. Reorganization of Permit Procedure.

It is further recommended: (1) that responsibility for decisions on all applications for permits, including those permits presently granted by the State Water Control Board, the Air Pollution Control Board, and the Marine Resources Commission, should be delegated to the Commissioner of the Department of Conservation, Development and Natural Resources; (2) that an Environmental Appeals Board should be created to hear appeals from parties to the proceedings seeking to contest the approval or denial of a permit by the Commissioner of the Department of Conservation, Development and Natural Resources; (3) that the Environmental Appeals Board should consist of the Chairman of the Boards of Environmental Quality, Natural Resources, Game and Inland Fisheries, and Marine Resources, and should be presided over by the Secretary of Commerce and Resources; (4) that any party seeking to contest the approval or denial of a permit should be required to file a formal complaint with the Environmental Appeals Board within ten days of the announcement of the designated approval or denial; (5) that the Environmental Appeals Board must act on any timely permit complaint within twenty days from the date on which that complaint was filed.

The Council proposes that the Commissioner develop a planning section which would fulfill the overall functions now assigned to the Council on the Environment and that the Council on the Environment be discontinued.

D. Continuation of the work of the Council.

It is further recommended that the study be continued in order to provide legislative assistance during the period of reorganization, to evaluate the effectiveness of State management efforts and to examine in greater detail proposals related to environmental impact statements, citizens' suits and noise pollution control.

IV. EXPOSITION

The foregoing proposals constitute, in the view of the Council the most viable means of eliminating the administrative deficiencies in Virginia's current approach to environmental management. Practically all of these problems stem from structural and organizational weaknesses and are thus resolvable only by a substantial reorganization of existing institutions. To achieve this end, the Council is recommending a plan which may be broadly understood in terms of eleven basic elements. Each of these is described and explained in the discussion that follows.

A. The location of environmental reorganization within the jurisdiction of the Secretary of Commerce and Resources.

Description. Virginia's new Secretarial system of government was established during the 1972 session of the General Assembly for the purpose of improving supervision and coordination of all State-level executive functions and to foster better communications between the agencies and the Governor. The Committee believes that this new system provides a valuable means within which to effect environmental reorganization. In order to realize maximum benefits, it is proposed to locate the reorganized administrative structure within the purview of a single Secretary of Commerce and Resources instead of three Secretaries as is the present case.

Rationale. The reasons for such a move are self-evident. Most of the existing environmental agencies are already responsible to the Secretary of Commerce and Resources. Maintaining his stewardship in this area will consequently minimize dislocation and confusion. Of the other secretaryships only that of Human Resources was regarded as a possible alternative locus of reorganization. But the Committee ultimately rejected the idea of transferring responsibility for natural resources into a domain concerned only peripherally with such matters. It should be emphasized, however, that close and continuing liaison with the Department of Health is anticipated. This is ensured by the Committee's recommendation that the Commissioner of Health should be appointed to the proposed Environmental Quality Board.

B. The consolidation of environmental management functions within the present Department of Conservation and Economic Development (to be renamed "Department of Conservation, Development and Natural Resources").

Consolidation. From the very outset it was apparent to the Committee that at least some kind of administrative consolidation would be necessary. On the one hand, there were the obvious problems stemming from extensive fragmentation of responsibility. Staff members of the State Water Control Board, for example, have found themselves repeatedly working at cross-purposes with other environmental agencies. Disagreements

between the State Water Control Board and the Bureau of Sanitary Engineering in the Department of Health have occurred in several instances as a result of different criteria used by each agency for the view of plans for sewage treatment plants. A similar conflict arose between the State Water Control Board and the State Corporation Commission over the standards for minimum flow releases from new dams.

Wasteful duplications of efforts abound under the existing configuration of independent agencies. The location of a sanitary landfill may involve inspections and approval of local health officials, the State Water Control Board, the Bureau of Solid Wastes and Vector Control, and even the Marine Resources Commission if nearby shellfish grounds may be affected by runoffs. The Commonwealth's new shellfish protection program itself requires the technical services of no less than four separate agencies and is marked by much duplication of water sample collection and analysis. Plans for sewage treatment plants involve double processing, as do those for solid wastes incinerators. Thus fragmentation means extra work for State employees while costing the taxpayers extra money. Fragmentation has also undermined inter-agency communications. A case in point is the story of how the Division of Mined Land Reclamation in the Department of Conservation and Economic Development established regulations and procedures relating to streams flowing from reclaimed strip mines. No formal consultation took place between the Bureau and the State Water Control Board when these regulations were being prepared. As a result, the standards were almost promulgated without any reference to the requirements of the State Water Control Board, despite the fact that the latter agency retains primary responsibility for stream standards throughout the State.

On the other hand, consolidation has been deemed necessary so as to create an institution in Virginia which can evaluate proposed projects and programs in terms of their full-scale impact on the environment. At present, there is no single agency which is either capable or authorized to take a broad look at and act upon the needs of environmental protection. Policy and standards are necessarily established in bits and pieces for specific media. No single board or official can act on environmental questions outside its narrow area of concern.

This deficiency has created particular difficulties in two completely separate areas—the construction of marina facilities and the initiation of commercial sand and gravel-projects on river bottoms. Both must have approval from the State Water Control Board and the Marine Resources Commission before being allowed to proceed. And both have become subject to ardent opposition from conservationists, who have sought to use the licensing power of the State Water Control Board and the Marine Resources Commission to block such projects. Time after time these two agencies have felt compelled to grant the licenses despite legitimate protests, not necessarily because the projects were environmentally sound but because, as to the narrow questions of water quality and effect on shellfish, the projects met prescribed standards.

At present there is question as to whether the State Water Control Board or the Marine Resources Commission or any other administrative agency can go beyond its limited mandate to assess a given project in respect of its overall environmental implications. The proposed consolidation will remedy this defect by creating an institution capable of taking the "broad view".

Locating Within the Department of Conservation and Economic Development. In considering the best means of effecting environmental reorgani-

zation, the Committee reviewed a variety of alternatives. Approaches taken by other states were discussed and compared, and several leading experts on reorganization were consulted.

A number of possibilities presented themselves, including the Pollution Control Agency approach taken by Oregon, Illinois, and Kentucky, a state of Washington-styled Department of Environmental Quality; and the "umbrella" approach tried by New Jersey, Maryland, and North Carolina. Each was examined for its advantages and its drawbacks; none was an obvious choice for the Committee, given the particular circumstances of Virginia's mode of government.

The ultimate decision was to supplement rather than supplant the Commonwealth's existing institutions. The Department of Conservation and Economic Development provided an ideal vehicle for this purpose: it was one of Virginia's oldest and largest natural resources agencies, using it as the principal locus of reorganization would keep displacement at a minimum while providing stability and continuity during the period of realignment. State officials had long been aware of the Department's potential in this regard. Indeed, the Council itself had specifically singled out such an approach as "especially worthy of study" in its report of January 1972. (p. 3.)

Under the more appropriate name of "Department of Conservation, Development and Natural Resources," the enlarged agency should provide the kind of coordination and communication that effective environmental management demands. In sum, it represents an attempt to draw the best out of the methods employed by other states and at the same time to respond to the special needs and circumstances of the Commonwealth.

C. The establishment of a Division of Environmental Quality within the proposed Department.

Alternatives. Among the most important elements included in the Committee's recommendations is its proposals to establish a division within the proposed Department of Conservation, Development and Natural Resources devoted to protection against pollution. As noted above, the Committee was immediately made aware of the need to eliminate the fragmentation of pollution control functions at the State level. What was less clear was how best this might be accomplished. The possibility of creating an independent agency to handle this assignment (such as those recently established in Oregon and Washington) was seriously considered. Such an approach, however, would have had a number of disadvantages. Separating the regulation of "resource quality" from that of "resource quantity" would have been an artificial and arbitrary way of dealing with environment. It would have created, moreover, new fragmentations in place of the old ones.

Nevertheless, it was clear to the Committee that the State's pollution-control efforts should be given unified direction. Close ties also had to be maintained with other environmentally related programs. The solution arrived at by the Committee was a two-fold realignment. First, the functions of Virginia's existing pollution control agencies would be transferred into a new structure devoted to environmental quality. Secondly, this new division would be administratively linked with three other related divisions and placed under the direction of a public official with broad coordinating and planning powers.

Composition and Rationale. The agencies whose functions have been singled out for transfer into the proposed Division of Environmental Qual-

ity are the State Water Control Board, the Air Pollution Control Board, and those sections of the Department of Health concerned with the regulation of solid waste and the review of plans for sewage treatment plants. (It is the recommendation of the Council after review of the Solid Wastes Study Commission's report that the vector control responsibilities of the Bureau of Solid Wastes and Vector Control should remain within the Department of Health.) It is anticipated that the several pollution control functions will be organized in the three bureaus of Air Quality, Water Quality, and Solid Wastes. (See Appendix "B".) It is further anticipated that the Division of Environmental Quality will serve as the organizational base for noise control and power plant siting should the General Assembly elect to establish such programs in the future.

The creation of the proposed Division of Environmental Quality should go far toward eliminating the most serious fragmentations, duplications, and overlapping responsibilities that currently exist among Virginia's environmental agencies. Immediate efficiencies should be realized by the consolidation of the procedure for reviewing sewage treatment plans. The inclusion of solid waste and air pollution control functions in the same agency should also reduce delays and costly overlapping of responsibility. Henceforth, job assignments should more readily lend themselves to organization along functional lines, thereby permitting more efficient use of personnel. Substantial long-range savings should also be possible, particularly through improvements in hiring, operational planning, and allocation of priorities. It is hoped, too, that the sanitarians of the Health Department stationed in each local jurisdiction can be used by interdepartmental agreement in lieu of additional air and water personnel.

D. The consolidation of the Air and Water Boards into an "Environmental Quality Board."

Citizen involvement. The Council firmly committed to continued participation by private citizens in the management of the Commonwealth's environment. Such involvement provides a valuable link between Virginians and their government and ensures responsiveness by public officials to the needs of the community-at-large. The Council also believes, however, that citizen involvement should be directed primarily to the making of environmental policy and the establishment of the regulations. To demand that Board members should decide on every permit application and review every administrative decision is to ask too much of private individuals. Such requirements also lead to the varied delays that the community finds most annoying in its administrative agencies.

Environmental Quality Board. The supersession of the existing Air and Water Boards by the proposed Division of Environmental Quality will create the need for a new structure for citizen involvement. The Council recommends, therefore, that a consolidated Environmental Quality Board should be established to allow appointed Citizen representatives of the community to oversee the operation of the entire Division. At the outset three private members of the seven-man Board will be drawn from the present State Water Control Board, and three will be drawn from the present Air Pollution Control Board bringing their existing expertise to the new board. The designation of the Commissioner of Health as the seventh member will ensure that factors relating to public health are properly considered in the setting of policy.

E. The establishment of a Division of Natural Resources within the proposed Department.

Modification of Department of Conservation and Economic Development. The Department of Conservation and Economic Development as presently

constituted is concerned with the preservation of Virginia's natural resources for a wide variety of uses, including uses related to recreation, industrial development, and education. Even after the Department is expanded to take on additional environmental responsibilities, its traditional conservation and development functions should remain of primary importance. The Council proposes to lodge this area of activity within a Division of Natural Resources, consisting of Bureaus of Forestry, Minerals, Parks and Recreation, Mined Land Reclamation and the Virginia State Travel Service.

Structural Links. The Division of Natural Resources would be administratively linked with the other three divisions of the proposed Department. This should facilitate communication and collaboration between environmental officials in areas of mutual involvement, a state of affairs which is often absent under current agency arrangements. The division will also contribute and be subject to the Department-wide planning process which will be possible for the first time under the proposed structure. "Across-the-board" planning for environmental needs is sorely lacking in Virginia at present. No administrative mechanism currently exists to consider the relative merits of future parks, dams, power plants, or lakes in terms of a broad environmental perspective. By providing for a division of natural resources to operate in parallel with the expanded Department's three other divisions, the Council believes it has provided a framework which will enable such planning to take place.

F. The transformation of the Board of the present Department of Conservation and Economic Development into a "Natural Resources Board."

Minimum Change. The creation of a Natural Resources Board will involve little more than a change in name. As at present, the Board will serve as a policy-making vehicle in all matters of resource conservation and development. Appointments will be based on the same criteria as under the current law, as will terms of office. The only major difference will be that, as a result of the proposed reorganization, the Board will oversee the policy-operations of a single division with the same functions rather than a full department.

G. The transfer of functions from the Commission of Game and Inland Fisheries to a Division of Game and Inland Fisheries within the proposed Department.

Transfer Rationale. For the most part, the Commission of Game and Inland Fisheries has operated effectively in an independent capacity. A lack of manpower has prevented the agency from exercising its authority over private dredging in the Back Bay area, but otherwise it has substantially met its statutory mandate. Nevertheless, it is clear to the Council that the inherently close ties between wildlife preservation, land acquisition and management and other aspects of environmental management are going to become increasingly important in the years ahead. If proper communication is to be assured between related administrative functions and proper effectuation of comprehensive environmental planning is to be permitted, the staff function of the Commission must be brought into the proposed management scheme.

H. Game and Inland Fisheries Board. The Council wishes to emphasize, on the other hand, that such a transfer will not entail a major realignment of the present Commission's function. Not only will the professional staff continue to operate in a distinct division, but citizen involvement will be maintained as before. A new Game and Inland Fisheries Board is proposed which will be comprised of exactly the same appointees and perform

the same policy functions as the current Commission. All major decisions as to season scheduling and bag limits will be left to the discretion of the Board. The transfer should be aimed primarily at effecting efficiency and economy in day-to-day staff work, and to allow for the involvement of the agency in broad environmental planning.

I. The transfer of functions from the Marine Resources Commission to a Division of Marine Resources.

Problems Cited. The Marine Resources Commission has undergone a number of major changes since it was first established under the title of "Commission of Fisheries." Once devoted to the single task of fostering Virginia's shellfish industry, the Commission has found itself in recent years charged with the task of regulating encroachment upon Virginia's subaqueous lands, especially projects relating to dredging and establishment of bulkhead lines; since July, 1972, the Commission has assumed responsibility for the implementation and enforcement of the new Wetlands Act. Other duties includes participation with the State Water Control Board and the Department of Health in implementing the federally-regulated shellfish sanitation program, and recent federal coastal zone management legislation likely will involve the Commission to an even greater extent in land use and environmental protection programs.

This wide range of duties has placed enormous strains upon both the Commission members and staff. The Council found problems of coordination between the Commission and other agencies because of (1) overlapping agency responsibilities within the shellfish sanitation program; (2) anomalous division of responsibilities with the Commission of Game and Inland Fisheries as to regulation of dredging projects in Back Bay; and (3) frequent delays stemming from the need to circulate permit applications and other administrative requests to other environmental agencies for review. The statutory requirement that the full Commission should act on all major permit requests has become an intolerable burden and a source of repeated delay. The number of formal Commission meetings has had to be doubled during the past year. In addition, there has been growing disagreement over precisely what road the Commission should take where environmental protection and economic development come into conflict.

Transfer. The creation of the proposed Division of Marine Resources, the Council believes, is vital to the development of a mechanism that will be more responsive to problems of governmental management. Under the Council's proposal, administrative and policy-making functions would be divorced; the problems of administration and enforcement would come within the ambit of the proposed Division, which would be comprised of a professional staff and headed by a director. The Division would be administratively linked with the other three divisions of the proposed Department which should facilitate planning, communication and collaboration in areas of mutual involvement; the disposition of permit applications would remain as a function of the Division and as a part of the department-wide permit procedure.

J. Marine Resources Board.

The responsibility for the making of regulations and the formulation of general policy for the proposed Division, however, would be vested in a Board of Marine Resources consisting of seven citizen members. Such a clear delineation of labor will result, the Council believes, in a more efficient use of government resources. In addition, the Council hopes that the proposed reorganization will permit a more intensive focus upon the prob-

lems relating to the development and conservation of Virginia's seafood industry.

Reorganization, in sum, will not solve the ultimate questions of how best to resolve conflicts between competing values. But the Council believes that by tying the regulation of Marine Resources in with Virginia's overall approach to environmental management, such problems will be dealt with in proper perspective. In the meantime, the delays and decisions on permit application may be reduced and a better delineation of agency responsibilities may be effected. The proposed Division of Marine Resources will carry out the same functions as are presently handled by the professional staff of the Commission. In addition, the Board, which will be comprised of present members will be permitted to devote greater consideration to matters of policy and adequacy of existing regulations.

K. The Vesting of General Supervision of Environmental Management in a Single Official.

During the course of its deliberation two basic problems with Virginia's existing arrangements for environmental management were brought to the Committee's attention more frequently than any other: (1) the lack of coordination of administrative procedures; (2) the absence of accountability for delays in those procedures. Nonaccountability not only creates public frustration but prolongs detrimental effects on the environment—e.g. delays in approval of plans for new sewage treatment plants.

The Council believes it to be in the public interest to establish a single authority accountable for environmental management: an official to whom citizens of the Commonwealth can look and know that "the buck stops there." Similar approaches have been taken in practically every state where reorganization has occurred. The concept of a single authority, together with the four division directors, creates clear lines of administrative authority; it provides a locus for coordination of day-to-day functions in all four divisions and for across-the-board agency planning. Importantly, it identifies one official in government who, along with the Secretary of Commerce and Resources and the Governor, can speak publicly and authoritatively on a full range of environmental questions.

L. The Consolidation of the Environmental Permit Procedure.

The Council found justification for widespread dissatisfaction with the manner in which applications are processed by the agencies studied. Reasons for delays include: (1) fragmentation of responsibilities; (2) requirements that part-time Commissions decide on permits; and (3) lack of specific accountability for permit processing.

The Council proposes to establish a consolidated permit procedure within the new department. The Commissioner would have responsibility for ultimate determination of the application but applications would be circulated internally through relevant divisions for review and processing. The Commissioner would be given necessary latitude to establish departmental procedures with respect to coordinating and expediting application processing, hearings and reports.

M. The Creation of an Environmental Appeals Board.

The Council has not been unmindful of the need to maintain a check against arbitrary administrative action on permit applications. While redress in the courts will be retained in the proposed reorganization, the Council believes it wise to provide for a prior administrative review by an

Environmental Appeals Board consisting of the chairmen of the four division-level citizen boards and the Secretary of Commerce and Resources, who would preside as Chairman. This approach allows for appeals to authorities with a measure of independence from the actual administrative process and provides concomitantly for involvement in appeals of the very persons responsible for formulating policy and promulgating regulations.

Under the Council's proposal, appeals from the Departmental Commissioner's decisions would have to be filed with the Appeals Board within ten days of the challenged action; the Board would have twenty days in which to review the record, conduct any needed hearings and rule on the appeal. The stringent time parameters for administrative review is consistent with the Council's concern to reduce delays and will require all parties involved to assume the proper initiative.

N. Continuation of the work of the Council.

During the course of its inquiries, the Committee recognized the enormity of its undertaking and the necessity of addressing the wide range of deficiencies, both specific and general, which have impaired the effectiveness of governmental management of environmental problems in Virginia. In the course of developing a mechanism within the context of specific objectives, the Committee was not unmindful of other items worthy of future study such as citizens' suits, environmental impact statements and noise pollution control. Forthcoming proposals related to land use control measures also should be examined from the standpoint of the merits of various structural alternatives available, including the proposed department. Finally, legislative assistance can be provided to those officials of government in charge of reorganization efforts; additional studies and hearings also can be conducted where necessary and advisable. Accordingly, the Council feels that the study should be continued and that another report should be filed with the General Assembly no later than December 1, 1973.

Respectfully,

LEWIS A. McMURRAN, JR., *Chairman*

WILLARD J. MOODY, *Vice Chairman*

RUSSELL M. CARNEAL

JOSEPH V. GARTLAN, JR.

ARTHUR R. GIESEN, JR.

EDWARD E. LANE

STANLEY A. OWENS

WILLIAM V. RAWLINGS

D. FRENCH SLAUGHTER, JR.

W. ROY SMITH

JAMES M. THOMSON

LAWRENCE DOUGLAS WILDER

EDWARD E. WILLEY

APPENDIX A

HOUSE JOINT RESOLUTION NO. 50

Directing the Virginia Advisory Legislative Council to continue its study of the consolidation of environmental agencies; to make a comprehensive environmental study concerning all aspects of governmental management of environment problems.

The Virginia Advisory Legislative Council is directed to continue its study of environmental problems, including a comprehensive Environmental Study concerning all aspects of governmental management of environmental problems and make a report to the Governor and General Assembly by the first day of December, nineteen hundred seventy-two with specific proposals for governmental management of certain problems relating to the environment of the Commonwealth, in conformity with the criteria hereafter provided.

The council may employ on a full or part time basis, and fix the compensation of, such consultants and administrative personnel as may be required to assist it in the performance of this study. The Council, in its discretion may draw on the expertise of persons now in the employ of the State who shall serve the Council in the capacity of consultants, and individuals exercising supervisory authority over such persons shall cooperate with the Council to the fullest possible extent.

The report of the Council to the Governor and General Assembly shall be oriented to governmental management of those environmental problems with which the State government is presently concerned and those environmental problems with which the State government may be expected to become concerned. With regard to such problems for which there are or have been management or study programs at the State level, the Council shall address itself to the following items of study in framing its report:

(a) Identification of State level management or study programs and the environmental problems on which they bear, directly or indirectly; evaluation of the effectiveness of State management efforts in dealing with environmental problems from the standpoint of the merits of organization, approaches and results as compared with significant management efforts of other states; evaluation of the findings and conclusions of State level study efforts.

(b) Descriptive analysis of current State management problems, regulations and laws dealing with, or having bearing on environmental problems, directly or indirectly, in the light of significant technological advances, as well as innovative regulations and laws adopted or proposed in other states, including such matters as citizens' suits, environmental impact statements, laws relating to bonds as a means of offsetting industrial pollution costs, and methods or mechanisms for consolidating multiple permit requirements.

(c) Descriptive analysis or problems of coordination and cooperation among the State and federal agencies and the State and its localities, as well as the problem of funding management programs.

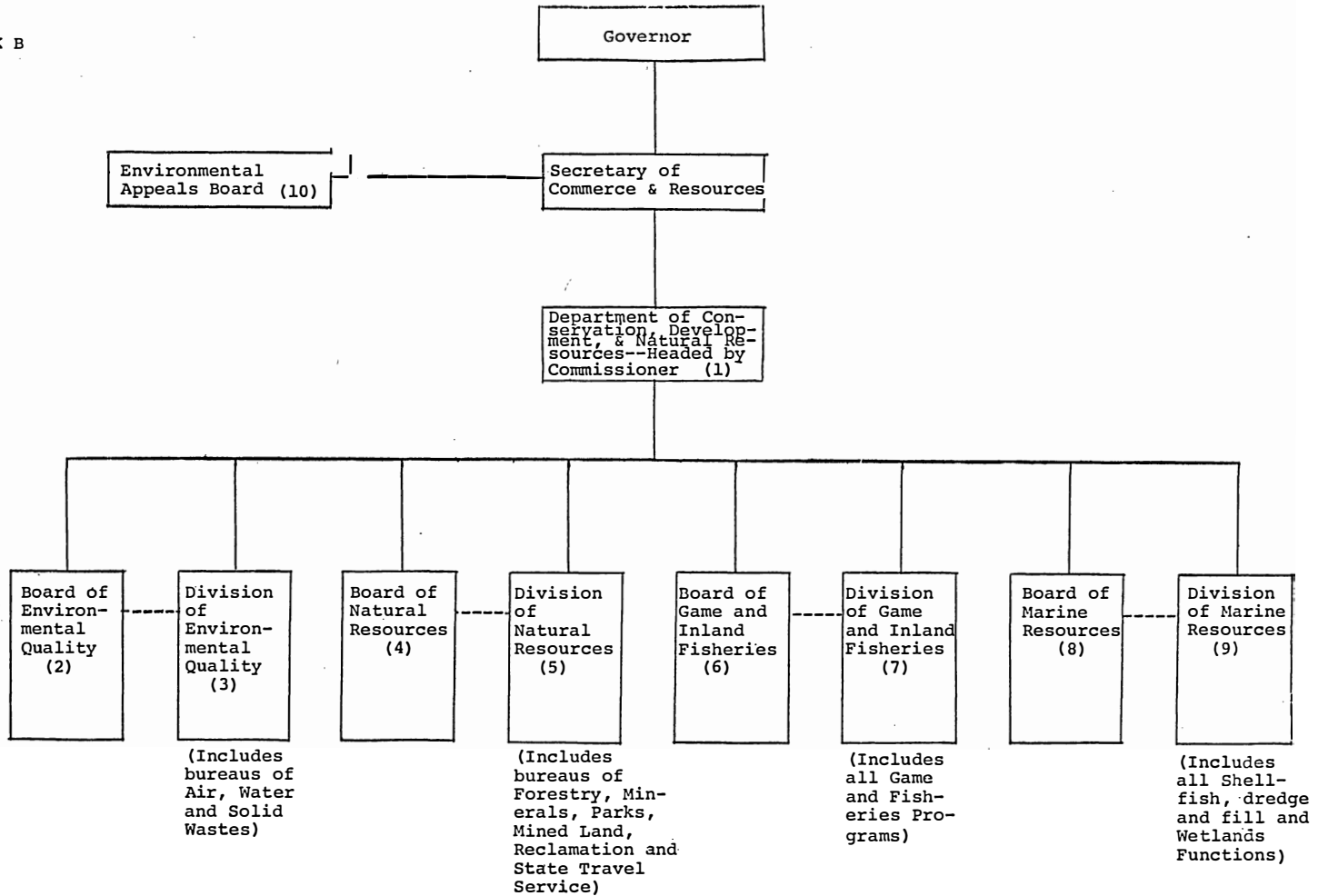
The Council shall identify and study environmental problems now unregulated by the State government but which may be expected to be regulated in whole or in part at the State level. Such study shall concern itself with the formulation of specific management proposals and alternatives

for inclusion in the Council's report, and shall include, but not be limited to proposals relating to land use controls, power plant siting and noise pollution.

The report of the Council shall contain specific proposals and alternatives within the scope of its study for the management of environmental problems at State level in those areas where State management efforts currently exist. In this regard, the report shall contain, but not be limited to, proposals and alternatives relating to reorganization of State agencies to heighten management effectiveness and innovative approaches to environmental problems now dealt with, directly or indirectly, at the State level.

The Council shall have the fullest cooperation of every agency of the State dealing directly or indirectly with environmental problems, and shall have free access to the records and other documents of such agencies as well as those of other State study groups or task forces.

APPENDIX B



1. *Commissioner* appointed by Governor, confirmed by General Assembly. Exercises all powers not expressly conferred upon the Boards of Environmental Quality, Natural Resources, Game and Inland Fisheries and Marine Resources. Charged with duty to coordinate permit review process, eliminate fragmentation and duplication of responsibility and effort. Responsible for administration and enforcement, may delegate certain powers and duties to Division Directors.
2. *Board of Environmental Quality*—seven members appointed by Governor, confirmed by General Assembly. Initial members to be comprised of three senior members of both air and water boards, plus the Commissioner of Health. Empowered to establish policy and adopt standards and regulations regarding air, water and solid wastes but not authorized to administer or enforce same.
3. *Division of Environmental Quality*—headed by Director who is appointed by Commissioner of Department. Director to have such duties and responsibilities as delegated by Commissioner. All policies, standards and regulations promulgated by the Board of Environmental Quality shall be administered and enforced by the Commissioner (through the Division of Environmental Quality).
4. *Board of Natural Resources*—twelve members appointed by Governor, confirmed by General Assembly (initial members to consist of present members of Board of Conservation and Economic Development). Empowered to establish policy and adopt standards and regulations regarding natural resources—forestry, parks, etc., but not authorized to administer or enforce same.
5. *Division of Natural Resources*—headed by Director who is appointed by Commissioner of Department, Director to have such duties and responsibilities as delegated by Commissioner. All policies, standards and regulations promulgated by Board of Natural Resources shall be administered and enforced by Commissioner (through the Division of Natural Resources).
6. *Board of Game and Inland Fisheries*—ten members, one from each congressional district as at present, appointed by Governor, confirmed by General Assembly. Initial members to consist of present members of Game Commission. Empowered to establish policy and adopt standards and regulations regarding such present duties as establishment of game and fishing seasons, etc., but not authorized to administer or enforce same.
7. *Division of Game and Inland Fisheries*—headed by Director who is appointed by Commissioner of Department. Director to have such duties and responsibilities as delegated by Commissioner. All policies, standards and regulations promulgated by the Board of Game and Inland Fisheries shall be administered and enforced by Commissioner (through the Division of Game and Inland Fisheries). The special Game Protection Fund shall be administered as present and shall not be commingled with other Department funds.
8. *Board of Marine Resources*—seven members appointed by Governor, confirmed by General Assembly, initial members to consist of members of present Marine Resources Commission. Empowered to establish policy and adopt standards and regulations regarding marine resources—shellfish, bottom land dredge and fill projects and wetlands, but not authorized to administer or enforce same.
9. *Division of Marine Resources*—headed by Director who is appointed

by Commissioner of Department. Director to have such duties and responsibilities as delegated by Commissioner. All policies, standards and regulations promulgated by Board of Natural Resources shall be administered and enforced by Commissioner (through the Division of Marine Resources). Public Oyster Rocks Replenishment Fund shall be separately administered as present and shall not be commingled with other Department funds.

10. *Environmental Appeals Board*—five members consisting of Secretary of Commerce and Resources, who shall act as chairman, plus chairmen of each of the policy-making boards of Environmental Quality, Natural Resources, Game and Inland Fisheries and Marine Resources. Will hear appeals of actions taken by Commissioner, appeals to be filed within 10 days of Commissioner's actions complained of, the appeals to be decided by Appeals Board within 20 days after appeals filed. Appeals to courts available after decisions of Environmental Appeals Board.