

**ENVIRONMENTAL MANAGEMENT REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

**TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY**



House Document No. 29

**COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1976**

RECOMMENDATIONS

1. That legislation be enacted to provide a consolidated permit procedure when permits are required from more than one State agency. See proposed legislation in Appendix II.
2. That legislation be enacted to amend §§ 62.1-44.18 and 62.1-44.19 of the Code of Virginia to provide that the State Water Control Board have sole responsibility over sewerage systems and in approving sewerage plans and specifications. See proposed legislation in Appendix III.
3. That Virginia's environmental agencies not be consolidated at this time.
4. That the VALC Environmental Management study be continued in a monitoring capacity.
5. That there be one Gubernatorial Secretary for Commerce and Resources.
6. That the role of the boards and commissions not be changed at this time.
7. That the way agency heads are appointed not be changed at this time.

MEMBERS OF COMMITTEE

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SUSAN T. GILL

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Richmond, Virginia

INTRODUCTION

State environmental management studies were initiated in 1971 by House Joint Resolution No. 35 which directed the Virginia Advisory Legislative Council "...to conduct a study of the desirability of establishing a single agency which will be empowered to regulate and control all types of environmental pollution." The study was continued by House Joint Resolution No. 50 (1972), which directed the Council "...to make a comprehensive environmental study concerning all aspects of governmental management of environmental problems."

In January of 1973, the Virginia Advisory Legislative Council reported to the Governor and the General Assembly (House Document No. 9) and recommended a reorganization of the Commonwealth's environmental agencies. House Bill No. 1586, "The Environmental Coordination Act of 1973", was enacted by the 1973 General Assembly to be in force on and after July 1, 1974. A provision was attached to the act that if it was not reenacted by the 1974 General Assembly, it would expire at midnight on July 1, 1974. The act was not reenacted and it therefore expired.

In January 1974, the Council reported on House Joint Resolution No. 265 regarding consolidation of environmental agencies, House Joint Resolution No. 99 relating to water pollution, and House Joint Resolution No. 236 regarding vehicular noise pollution. The report, House Document No. 19, 1974, recommended House Joint Resolution No. 49, 1974, (See Appendix I), which called again for the "...study of the consolidation of environmental agencies." This latest resolution led to this report.

The membership of the Committee included: Delegate Archibald A. Campbell, Wytheville, Chairman; Delegate Stanley A. Owens, Manassas, Vice-Chairman; Delegate-Elect Gerald L. Baliles, Richmond; Delegate John D. Gray, Hampton; Delegate Charles W. Gunn, Jr., Lexington; Delegate Lewis A. McMurrin, Newport News; Senator William V. Rawlings, Capron; Delegate James M. Thomson, Alexandria; and Senator Edward E. Willey, Richmond. Senator Rawlings died before this report was approved by the Committee.

Assisting the Committee in its deliberations were Earl J. Shiflet, Secretary of Commerce and Resources and Gerald McCarthy, Administrator of the Council on the Environment. Jonathan Murdoch-Kitt and Susan T. Gill, of the Division of Legislative Services served as staff to the Committee.

DEVELOPMENT OF THE STUDY

The Committee met five times in 1975. It tried to hear the positions of all the potentially concerned agencies and administrators. The Committee did not hold public hearings, because it had transcripts of the extensive public testimony from Statewide public hearings held in 1973.

The areas and questions that the Committee faced were:

1. Environmental agency permit applications; expediting and streamlining the process;
2. Whether or not there is overlap in authority and duplication of work in State environmental agencies; and if there is overlap and duplication, what to do about it;
3. Review of the draft report, "Integrating and Coordinating Environmental Planning and Management in State Government," by the Council on State Governments; and
4. Whether or not to consolidate the State's environmental agencies.

STATE ENVIRONMENTAL PERMITS

In 1974 the General Assembly added § 10-184.1 and amended § 10-185 of the Code of Virginia to authorize the administrator of the Council on the Environment to receive, consolidate, coordinate, expedite and evaluate multiple permits for major projects. To date, no applicant has taken advantage of this consolidated permit procedure. Various reasons were given by prospective applicants for their lack of interest in the consolidated permit including: lack of clarity in the law, fear of multiple steps instead of coordination, and an unwillingness to experiment with untried procedures.

It is the opinion of the Virginia Advisory Legislative Council that for the benefit of prospective applicants, when a project requires a State permit from more than one State environmental regulatory agency, the applicant should make a single unified permit application to the administrator of the Council on the Environment. This unified permit requires that after the application is complete, one unified hearing will be held within sixty days and decisions on the permit will be made within ninety days after the application is complete. The decisions will continue to be made by each individual board or commission. The proposed legislation clarifies the law, and limits its application to six agencies: The Department of Conservation and Economic Development, the State Health Department, the Marine Resources Commission, the Air Pollution Control Board, the Soil and Water Conservation Commission and the Water Control Board. The proposal also

provides that the Council on the Environment may issue rules and regulations to carry out the section. See proposed legislation in Appendix II.

The Council examined whether the commissioner, executive director or administrator of an environmental regulatory agency should have the power to approve or disapprove permit applications with an appeal to the appropriate board or commission. It was decided that this power should not be given to the individual agency head because it would eliminate citizen board determination, change the role of the boards and commission, and no agency head expressed a compelling interest to make the procedural change.

SEWERAGE SYSTEMS

The Council also recommends that legislation be enacted to amend §§ 62.1-44.18 and 62.1-44.19 to delete any reference to the State Health Department and give sole responsibility for sewerage systems, plans and specifications to the State Water Control Board.

The Health Department was given responsibility in this area many years ago when it had the only technical staff. Today, the staff of the State Water Control Board is well trained and possesses the requisite expertise to handle this area alone. This legislation would also eliminate duplication, delays and confusion. The Health Department should be directed to cooperate with the State Water Control Board in transferring necessary files, documentation and personnel.

ORGANIZATION OF ENVIRONMENTAL AGENCIES

The Council examined the questions of (1) overlap in authority and duplication of work within State environmental agencies; (2) whether the State should consolidate environmental agencies; (3) whether there should be a gubernatorial Secretary for natural resources and a separate gubernatorial Secretary for Agriculture, Commerce and Labor; (4) the role of the boards and commissions and; (5) the way agency heads are appointed.

OVERLAP AND DUPLICATION

There are differences in the type of education, the techniques used, and the amount and type of training and expertise that is necessary for the Air Pollution Control Board, the Water Control Board or the Health Department's Bureau of Solid Waste and Vector Control. The Virginia Advisory Legislative Council found little duplication in personnel. It was apparent, however, that there were some areas of duplication in programs and personnel, but the Committee, in studying the State organization and the administrative organizations in the other states could not arrive at

the single best organization.

CONSOLIDATION OF ENVIRONMENTAL AGENCIES

The Virginia Advisory Legislative Council studied the preliminary draft report by the Council of State Governments entitled "Integrating and Coordinating Environmental Planning and Management in State Government," (1975), as well as a summary by the administrator of the Council on the Environment of the preliminary draft. The report generally showed that environmental quality is an important public issue that has become a major institutional objective of State government. Protection and preservation of the environment is viewed as an important function of government. The trend appears to be in the direction of guiding development in the pursuit of environmental quality.

The states are almost equally divided among three different organizational approaches; sixteen states use the health department model with environmental agencies located within the health department; sixteen states have a super agency other than the health department which oversees pollution, conservation and development programs; twelve states have a "little EPA" which includes air, water and solid waste programs; and six states, including Virginia, have a system of environmental agencies that is not structurally integrated. The Council of State Governments sent out questionnaires to personnel in various levels of state government with results that indicated great dissatisfaction with the health department and "little EPA" models, but apparently some satisfaction with the super agency model. It should be noted that super agencies have been in effect for only a short time, and there has not been extensive experience with that model.

It is the opinion of the Virginia Advisory Legislative Council that these national trends should be monitored and that Virginia should not adopt any organizational model until there is more experience with the three basic models and until one model becomes more accepted than the others.

The Council heard strong arguments from Virginia State agencies against consolidation. Regardless of the vested interests of these agencies, they presented a good case. It became apparent to the Council, based upon the Council of State Governments' preliminary report and testimony from Virginia agencies, that no matter how environmental agencies could be reorganized, essentially the same people would remain. The structure or organization of environmental agencies is not as important as integration and coordination within agencies.

Four major strategies or techniques for environmental management were considered in the Council of State Government's report and by the Virginia Advisory Legislative Council in its deliberations:

1. organizational—consolidation of environmental programs;

2. policy—statements of policy, comprehensive plans;
3. procedural and informational—environmental impact statements reviewed, information systems and inter-agency task forces, and
4. programmatic—land use planning, coastal zone management, and areas of State concern.

Virginia, within its Secretarial system, is moving toward an approach that might be a combination of both procedural/informational and programmatic. Since the Secretarial system is relatively new, it is the opinion of the Council that Virginia should let its Secretary of Commerce and Resources exercise his authority and discharge his responsibility in bringing about programmatic and informational/procedural “environmental management”.

One of the reasons not to consolidate at this time is the cost. According to all the testimony heard by the Committee of the Council, there would be a substantial initial cost to the State to reorganize environmental agencies. The second point is that once reorganized, there is no guarantee that the State would save any money. For the above reasons, the Council recommends that the State not undertake environmental agency reorganization at this time.

CONTINUE THE STUDY

Virginia has been and presently is in a period with an emphasis on granting permits, especially under the federal Clean Air Act and Water Pollution Control Act. The emphasis in the future, however, will be on monitoring, policing, regulating and supervising the permits that have been issued. Perhaps at that point, it would be logical to reconsider environmental reorganization. The Virginia Advisory Legislative Council recommends that the environmental management study be continued expressly to monitor organizational developments in other states and to examine whether Virginia’s environmental agencies are cooperating with each other and with the Secretary of Commerce and Resources on permits and in regulatory programs.

SECRETARY OF COMMERCE AND RESOURCES

The question of whether there should be a Gubernatorial Secretary for natural resources and a separate Secretary for Agriculture, Commerce and Labor was addressed by the Council. It was decided that there should be one Secretary for Commerce and Resources. First, as discussed earlier in the section on consolidation, informational/procedural and programmatic techniques are being developed by the Secretary of Commerce and Resources moving toward executive “environmental management.” This could not be

done as effectively if there were two secretaries involved. Pollution control, conservation and development programs are all part of environmental management - which should be vested in one Secretary.

Second, the role of the Secretary is, by its nature and intent, one of coordination.

Third, sub-gubernatorial decisions are made by Secretaries to relieve the Governor of day to day administrative questions. By combining Commerce and Resources, the Governor has the benefit of a balanced viewpoint in one individual.

And fourth, with one Secretary for Commerce and one for Resources, various and possibly competing factors do not have to be balanced, and this may lead to a position of advocacy for one particular view. This could lead to an adversary relationship between Secretaries which should be avoided. For these reasons, the Council recommends that there be one Gubernatorial Secretary for Commerce and Resources.

ROLE OF THE BOARDS AND COMMISSIONS

As discussed in the permit section, the role of the boards and Commissions should not be changed at this time. The role of these citizen boards was examined closely by the Council, especially in the permit process. Extensive technical expertise is often required in judging whether a permit should be granted or rejected. Citizen members often do not have the necessary expertise, at least initially, to make informed decisions. This has led to the various agencies' technical staffs influencing or doing the job of the board or commission.

Notwithstanding this weakness, the Committee of the Council heard no evidence that would indicate a change in the role of the environmental boards and commissions should be made.

APPOINTMENT OF AGENCY HEADS

Federal requirements as well as historical timing often influenced whether the Governor or a board or commission appointed an agency head. Appointments are staggered, and all do not fall due during one Gubernatorial administration. This may be a valuable point, for continuity is insured. There are some drawbacks which include the lack of consistency of philosophy with the Governor which may be held by an agency head who was appointed by a previous Governor or by a citizen board. The Council did not hear any compelling evidence to make a change in the way agency heads are appointed and therefore recommend that the present practices not be changed.

SUMMARY

The Council recommends that its two legislative proposals, regarding a consolidated multiple permit procedure and responsibility over sewerage systems be enacted. It also recommends that environmental agencies not be consolidated at this time and that the VALC Environmental Management study be continued in a monitoring capacity.

The Council also suggests that there be one Gubernatorial Secretary for Commerce and Resources, and that the role of citizen boards and commissions and the way agency heads are appointed not be changed at this time.

Respectively submitted,

Willard J. Moody, Chairman

Edward E. Lane, Vice-Chairman

George E. Allen, Jr.

Vincent F. Callahan, Jr.

Archibald A. Campbell

Joseph V. Gartlan, Jr.

Jerry H. Geisler

Robert R. Gwathmey, III

C. Hardaway Marks

Lewis A. McMurrin, Jr.

James M. Thomson*

Lawrence Douglas Wilder

Edward E. Willey

See the following Dissent.

DISSENT

Delegate James M. Thomson

Mr. Thomson dissents to the recommendation that full responsibility for approval of sewerage systems be transferred from the Department of Health to the Water Control Board. He feels that the dual control has served Virginia well. It is the Health Department to whom the public looks for protection of life and health.

APPENDIX I

HOUSE JOINT RESOLUTION NO. 49, 1974

Directing the Virginia Advisory Legislative Council to continue its study of the consolidation of environmental agencies.

WHEREAS, the Virginia Advisory Legislative Council has been engaged in an intensive study of the feasibility and means of reorganizing the Commonwealth's environmental agencies, such study having been first initiated in nineteen hundred seventy-one by House Joint Resolution No. 35; and

WHEREAS, in the course of its deliberations, it has become apparent to the Council that some form of reorganization must be undertaken to ensure the coordination of existing environmental functions; and

WHEREAS, a number of reorganizational alternatives have been proposed which will require careful consideration to assure that any reorganization will be justified in terms of the unique needs of both the agencies involved and the citizens of the Commonwealth; and

WHEREAS, a number of developments at both the State and federal levels could have important implications for any such reorganization, particularly those developments in the area of land use planning; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of the consolidation of environmental agencies. Such study shall include environmental problems now regulated by the State government and those which may be expected to be regulated in whole or in part at the State level, particularly in the area of land use planning.

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.

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 its study.

The Council shall conclude its study and make its report to the Governor and General Assembly no later than November one, nineteen hundred seventy-five.

APPENDIX II

A Bill to amend and reenact §§ 10-184.1 and 10-185 as amended, of the Code of Virginia; and to amend the Code of Virginia by adding a section numbered 10-184.2, the amended and added sections relating to multiple State agency environmental permits.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10-184.1 and 10-185 as amended, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10-184.2 as follows:

§ 10-184.1. Appointment, etc., powers and duties of administrator.—The administrator of the Council on the Environment shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident to that of the appointing Governor. Any vacancies occurring in the office of administrator shall be filled by the Governor subject to confirmation by the General Assembly. The administrator of the Council on the Environment shall devote full time to the duties and responsibilities of his office, which shall include the following:

(1) Developing uniform management and administrative systems which will assure coherent environmental policies and which will facilitate provision of environmental services to the public;

(2) Taking necessary steps to promote the efficiency of management and coordinate administrative practices within and among the boards and agencies of the Council including the effective use of personnel resources among the agencies;

(3) ~~Consolidating, coordinating and expediting the permit - review process, eliminating redundant or overlapping procedures and ensuring that any formal hearings required are consolidated into one hearing for major projects, and coordinating the processing of permits where both federal and State requirements are involved;~~

(4) Coordinating the preparation of a joint environmental agencies' budget, containing sub-budgets, each of which shall be approved by the appropriate board or agency and thereafter submitted to the administrator who shall convey without change said budget or budgets to the Secretary and Governor for approval;

(5) Preparing and submitting annually, with the cooperation of the boards and agencies, an environmental and management report to the Governor and the General Assembly in which he shall assess in detail:

(a) The Council's success in achieving the purposes of the enabling legislation.

(b) The reasons for any failure to achieve those purposes.

(c) Any changes in legislation that the Council believes necessary to better achieve those purposes.

(d) Management actions taken in support of the enabling legislation.

(e) New environmental programs to be considered for legislative action.

(f) New environmentally related programs which should be considered by the General Assembly for transfer to another board or agency or to the jurisdiction of the administrator.

Such reports may be prepared in conjunction with the reports of the Council on the Environment as directed by § 10-186.

The administrator shall employ such personnel and procure the necessary professional services to perform the duties of the office.

§ 10-184.2. Multiple permit process; powers and duties of the administrator; rules and regulations.—A. If a project requires a State permit or certificate from more than one State environmental regulatory agency, the applicant shall make a single unified application to the administrator on a form prescribed by the administrator.

B. Notwithstanding any other provision of law, the administrator shall receive and review the application and at his discretion may consolidate, coordinate and expedite the permit review process including but not limited to the elimination of redundant or overlapping procedures; consolidation of any formal hearings that may be required into one hearing; and coordination of the processing of permits where both federal and State requirements are involved.

C. For the purposes of this section the State environmental regulatory agencies shall include: the State Air Pollution Control Board; the Board of Conservation and Economic Development; the State Health Department; the Marine Resources Commission; the Soil and Water Conservation Commission and the State Water Control Board.

D. Notwithstanding any other provision of law, the acceptance of an application for multiple permits by the administrator, after the administrator has ascertained that the application is complete and otherwise acceptable, shall commence the processing period as to each board or commission involved. The hearing for a multiple State permit shall be held within sixty days after the application to the administrator is complete; and each board or commission decision on a multiple permit shall be made within ninety days after the application to the administrator is complete.

E. Judgment of the merits of each permit that is required shall remain the responsibility of each respective board or commission. Each board or commission shall make every effort to coordinate its permit review process with the administrator.

F. The Council on Environment shall have the authority to issue necessary rules and regulations to carry out the provisions of this section.

§ 10-185. Further responsibility and authority of administrator.—It shall be the further responsibility of the administrator of the Council, in accordance with provisions and

limitations as may be elsewhere set forth in law, to carry out the policy of this chapter. In so doing, the administrator is authorized to:

(1) Coordinate all State communications with federal agencies involving State concern having relation to environmental problems, and to call meetings as needed of heads of State agencies and other personnel to review policies and programs of mutual concern relating to environmental problems;

(2) Make rules and regulations for his own staff organization;

(3) Sue and be sued in the Council's official name;

(4) Enter into and perform contracts; and acquire in any lawful manner personal or real property or any interest therein deemed necessary in the performance of the Council's functions, and to maintain and improve such property or dispose of it when necessary;

(5) Accept and administer services, gifts and other funds donated to the Council to carry out the policy of this chapter;

(6) Engage and pay for the services of professional consultants;

(7) Initiate and supervise research programs;

(8) [Repealed.]

~~(9) Receive applications for, coordinate and supervise the evaluation of, multiple permits for major projects issued by individual environmental regulatory agencies.~~

APPENDIX III

A Bill to amend and reenact §§ 62.1-44.18 and 62.1-44.19 as amended, of the Code of Virginia, relating to sewerage systems.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.18 and 62.1-44.19 as amended, of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.18. Sewerage systems, etc., under supervision of Board.—(1) All sewerage systems and sewage treatment works shall be under the general supervision of the ~~State Department of Health and the Board jointly~~.

(2) The ~~State Department of Health~~ Board shall, when requested, consult with and advise the authorities of cities, towns, sanitary districts, and any owner having or intending to have installed sewage treatment works as to the most appropriate type of treatment, but the ~~Department~~ Board shall not prepare plans, specifications, or detailed estimates of cost for any improvement of an existing or proposed sewage treatment works.

(3) It shall be the duty of the owner of any such sewerage system or sewage treatment works from which sewage is being discharged into any State waters to furnish, ~~when requested by~~ to the Board, ~~to the State Department of Health from time to time~~ information with regard to the quantities and character of the raw and treated sewage and the operation results obtained in the removal and disposal of organic matter and other pertinent information as is required. ~~The State Department of Health shall furnish the Board with such available information as the Board requires.~~

§ 62.1-44.19. Approval of plans and specifications.—(1) Before any owner erects, constructs, opens, expands or operates a sewerage system or sewage treatment works designed to serve more than four hundred persons, and which will have a potential discharge or actual discharge to State waters, such owner shall file in duplicate with the ~~State Department of Health~~ Board a copy of pertinent plans, specifications, maps and such other information as may be required, in scope and detail satisfactory to the ~~Department and the Board~~.

(2) The Department shall thereupon notify the Board that it has ~~received the plans and other data~~. If the plans involve facilities from which there is or is to be a discharge to State waters, the application shall be given public notice by publication once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe. Upon completion of advertising, the Board shall advise the ~~Department~~ applicant of the standards of quality applying to such State waters and the treatment

requirements necessary to prevent contravening such standards of water quality.

~~(3) The Department shall then review the plans without delay and file with the Board within two months one copy and a report in which the plans are approved or disapproved. If they are not approved, the report shall state what modifications, if any, or changes will be required for approval.~~

(4) The Board shall review the plans ~~and the report from the Department~~ and make a ruling within two months approving or disapproving the plans and stating the grounds for conditional approval or disapproval. If they are approved, the Board shall grant a certificate authorizing construction of the facilities.

(5) Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Board within a reasonable time to meet such new requirements. The Board may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

(6) The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under § 62.1-44.15 (8).

(7) Nothing in this section shall limit the power of the Board ~~and the Department~~ in the control of sewerage systems or sewage treatment works serving less than four hundred persons.