

Environmental Session

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Pollution Management in the Coastal States

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FOREWORD

The pendulum of pollution management in the coastal states will swing back and forth between the extreme views of the conservationists, guided by emotion, and the selfish views of the business interests, guided by economic factors. The problem is to establish a structure to manage the pollution of the coastal zone on a systems management basis concept. The thing that makes this management problem complex is the fact that the management of pollution in the coastal zone must strike a proper balance between the ecological viewpoint of the conservationist, the economic viewpoint of the industrialist or the user, and the technical information which the manager must have in order to achieve a balance between the other two. Then we reach the key to the problem, and that is the political management structure which must be developed in order to implement the management decisions and make them work.

Key Problem Areas

I have identified five key management areas that are common to all coastal states in the management of pollution problems in the coastal zone. These are: (1) fresh water pollution management, both surface and submerged; (2) air pollution management in the coastal areas; (3) management of the mineral deposits within the coastal zone, including petroleum and natural gas; (4) management of the coastal marshlands, wetlands and the estuarine areas, including ocean dumping; and (5) management of the recreational areas, including sea islands. I have not listed atomic radiation pollution management, since the federal government retains exclusive jurisdiction in this area.

Definition of the Coastal Zone

It is believed that each state must prepare its own working definition of its coastal zone. A master definition relying on international law is well nigh impossible. Each state must come to grips with the legal questions concerning territorial limitations with the federal government and adjacent states. It is suggested that a *working* definition must be adopted by each state in order to

implement a coastal zone management plan. One example is the *working* definition of the coastal zone of Georgia: "The coastal zone of Georgia is the area covering the bottom of the waters, the surface of the waters, and the air above the waters, and land extending from a seaward boundary, which would be coordinates marking the bottom of the slope of the continental shelf. The coastal zone would extend from the shore inland to a boundary which is the western-most county lines of those counties which contain the Pleistocene "Wicomico" (100-foot contour) shore line." This working definition has been reviewed and approved by the Attorney General's office and the State Geologist of Georgia.

THE COASTAL STATES ORGANIZATION

The primary thrust of the Coastal States Organization has been, to date, in the area of coastal zone management. The Coastal States Organization is a group of gubernatorially appointed delegates from 26 of the 32 coastal and Great Lakes states, commonwealths and territories.

The goals of Coastal States Organization are: (1) communications between states on matters of mutual interest to member states; (b) joint consideration of certain problems or projects of mutual interest; (c) development of representative positions; (d) interjection of state interests and positions into national legislative activities of mutual concern, such as National Oceanographic Program and National Coastal Zone Research Program; and (e) interjection of state interests into activities of federal agencies active in oceans, estuaries and coastal zone.

Activities of the Organization to date include: (a) helping develop legislation relating to National Coastal Zone Management and National Coastal Laboratory programs (specifically - S 2802); (b) working with the Executive Branch on the National Oceanic and Atmospheric Administration (NOAA) and the Environmental Protection Agency (EPA); (c) developing organization and (d) assisting development of state programs in the coastal zone.

COASTAL POLLUTION MANAGEMENT ISSUES

There have been some questions raised by the various delegates to the Coastal States Organization which identify some key issues on coastal zone pollution planning and management. Some of these are:

How strongly should regulatory and management controls be exercised? This is not the threshold question among coastal issues; in fact, a good case can be made for deferring the adoption of controls for 2 or 3 years. The purpose of such timing is to evolve the control mechanisms as a part and parcel of a comprehensive plan for the coast, developed after thorough studies, meetings, hearings and so forth. But control is the ultimate question, the one which matters most to most people concerned about the coast. It quickly settles on specifics: can outer continental shelf lands near prime fisheries be withdrawn from oil exploration and leasing? To what degree can privately-owned land in a coastal wetland be kept out of development through regulation?

How should responsibilities be divided among levels of government? It has been fairly easy, in Washington, D.C., to decide that the states ought to bear the primary responsibility for coastal planning and management, while the federal government provides funds and local governments are given authority to regulate

minor decisions. It has not been as easy, in the state legislatures, to agree that a state agency should control development and land use in the coastal towns in the area of pollution management.

How should a state government's participation be organized? On the planning side, a state must decide whether to single out the coastal zone for intensive planning attention or to make a coastal zone anti-pollution plan as a consistent and integral element of a statewide land and water use plan. In organizing management and regulation, a state must decide whether to turn the job over to an existing agency, a new coastal agency or an inter-agency commission set up to implement the coastal zone plan. Another management concept would be "lead agency" for specific areas of management.

How far inland should planning and controls extend? Proposals range from the modest (e.g., to the line of vegetation or of extreme high water) to the ambitious (every county touching the coast, or the second tier of counties). In some states, the landward extent of the coastal zone will depend greatly on how strong the land use controls are.

How far seaward should planning and controls extend? For the state, the simplest answer is to extend the coastal zone program out to the limits of the state's jurisdiction — but those limits are presently in dispute before the Supreme Court. The Atlantic coastal states claim that their colonial charters, predating the Constitution, give them jurisdiction far beyond the 3-mile limit established by Congress. Should the federal arguments prevail, several states may still find it possible to expand their areas of coastal waters under the 3-mile rule. Particular attention should be paid to Supreme Court rulings which permit a state to "close off" — assume jurisdiction over — bays, gulfs and sounds under 24 miles in width. The bottom of the slope of the continental shelf could be used as a working definition of the seaward extent.

FEDERAL ROLE IN POLLUTION MANAGEMENT¹

Three new federal environmental agencies, created in 1970, provide some useful and interesting parallels for state organizational change. The federal organization of its grants and regulatory programs is of further interest because it is a strong, if indirect, incentive on state governments to align their own agencies in a similar manner, in order to facilitate doing business with an increasingly powerful federal government. In addition to the structure of federal environmental quality agencies, the content of federal programs is important. Both the financial aid and regulatory aspects of federal programs have encouraged state governments to initiate and strengthen certain functional components of their programs.

On the first of these points, the federal government, recognizing some of the same institutional fragmentation and gaps that have troubled many states, created three new environmental organizations in 1970. Two of these organizations were formed by consolidations of existing environmental programs, and one new unit was set up to carry out a new function.

In the fall of 1970 the federal government consolidated its major pollution control programs into the Environmental Protection Agency (EPA), a new administrative agency with a regulatory emphasis. The main objective of this

¹The subject matter herein has been excerpted from a report by Elizabeth Haskell, Fellow, Woodrow Wilson Institute, Smithsonian Institute.

consolidation was to integrate pollution control planning and standards-setting, to avoid federal policies that merely traded one form of pollution for another variety in the environment. The reorganization was the product of extensive analysis by President Nixon's Council on Executive Reorganization, a special task force set up to study the entire federal executive structure. A separate reorganization process, which was begun in the Johnson Administration and culminated in 1970, consolidated air monitoring and research and smaller marine programs in a National Oceanic and Atmospheric Agency (NOAA). After much debate this new agency was located in the Department of Commerce. Earlier that same year, Congressional initiative resulted in the National Environmental Policy Act of 1969, which established the Council on Environmental Quality (CEQ) in the Executive Office of the President, to act as an overall advisory, coordinative and planning unit for environmental policy. Its purview ranges across pollution control, conservation, land use, population and other environmental issues. A second job of the CEQ is to increase concern for the environment in all federal agencies, although it has no enforcement mechanism to guarantee this concern.

While the genesis of each organization was different, and the main motives for their creation ranged from highly political in the case of NOAA to strongly analytical in the case of EPA, each move was designed to redirect and integrate federal policy to focus on environmental problems in a more comprehensive way. The federal environment agency that is likely to have the greatest impact on states is EPA, because of its many grant and regulatory programs.

While the message in EPA's creation was consolidation, the internal structure of that organization implies that separate pollution program categories will remain, at least for the immediate future. Thus, states can expect federal pollution control standards and financial aids to be administered for the meantime as before, with separate programs for air pollution control, water pollution control, solid wastes management, radiation and pesticides. Within most of these categories, further segmentation of grants is made along functional lines. There are grants for planning, manpower training, construction, research and overall grants to support a state, local or regional pollution control agency. Analysis is underway within EPA to see if integration of these programs is merited. But today federal programs continue to encourage similar separately identifiable pollution control programs at the state level. State governments simply find it an easier administration process when doing business with the increasingly powerful federal partner, to structure their agencies to match federal ones. And, because states compete with one another for federal dollars, there is a tendency for many to believe that their share will be greater if the federal agencies can readily identify a beneficiary state program or organization similar to their own. Those states that do not have organization patterns that match the federal ones, such as in Illinois and in Washington's new Department of Ecology, may find some difficulties in relating to federal anti-pollution agencies.

While the federal structure has encouraged, somewhat unconsciously, a similar state fragmentation of environmental activities, the content of federal environmental programs has had many positive effects on state activities. Federal grants or requirements to set environmental standards have been incentives to states to strengthen their environmental management efforts. The level of federal financial aid for air, water and solid wastes pollution control programs increased sharply since the mid-sixties. This has directly influenced the size, scope and in

some cases the very existence of corresponding state programs. Many states' solid waste management programs, which are characteristically the smallest and newest of states' anti-pollution efforts, were initiated to receive federal planning dollars. Today, these federal funds make up the bulk of the states' expenditures for this purpose. Federal assistance for state and local air pollution control programs is larger both in terms of total dollars and percentages. In order to receive the various types of assistance, states have had to set up corresponding programs or redirect existing programs to match federal strategies.

State governments have also often been required to perform specified environmental functions, as a condition of a grant or loan. For instance, state-wide recreation planning is required to receive federal Land and Water Conservation Fund monies. More recently, river basin planning and state-wide assessment of waste water treatment needs will be required in order for a state to be eligible for Office of Water Quality grants for municipal waste treatment plants.

In addition to using financial inducements to persuade states to set up programs and take other environmental steps, Congress has in recent years levied on the states the statutory option to either set water and air quality standards or have the federal government do it for them. The Water Quality Act of 1965 issued such a choice to the states regarding establishment of interstate water quality standards and implementation plans. Similarly, until 1970, states were also asked to establish air quality standards in federally designated air quality regions, with the federal government taking over only if a state failed to act effectively. By the 1970 amendments to the Clean Air act, however, the federal government now sets the initial ambient air quality standards, with the states drawing up the plans to implement these pollution limits. Most states have had to initiate new activities or expand existing programs in order to comply with these federal standards-setting laws within the required time period.

Through the influence of standards-setting and granting procedures, EPA officials are reaching down more into state governments to set specific requirements for state water and air pollution control programs, and for their administrative structures.

CONCEPT OF A STATE ENVIRONMENTAL ORGANIZATION

When a state creates a structure of pollution control management in the coastal zone, it should make sure that local interests can be properly balanced against federal interests. I stress this balanced concept of pollution management in the coastal zone.

I have developed a conceptual framework which leads from the local through the state to the federal government (Fig. 1). When a state has adopted a working definition of the coastal zone, it should place that geographical entity under the jurisdiction of a "Coastal Zone Planning Management Authority". Reporting to the authority would be local planning commissions.

At the state level I would structure a State Environmental Protection Agency. This agency would serve the following functions: (1) would be the channel through which all federal monies, grants and regulations concerning pollution management would funnel; (2) would be the agency where all environmental impact studies would be administered within the state; (3) would be the agency through which all federal environmental regulations would flow to the various regional planning and management authorities within the state and (4) would be

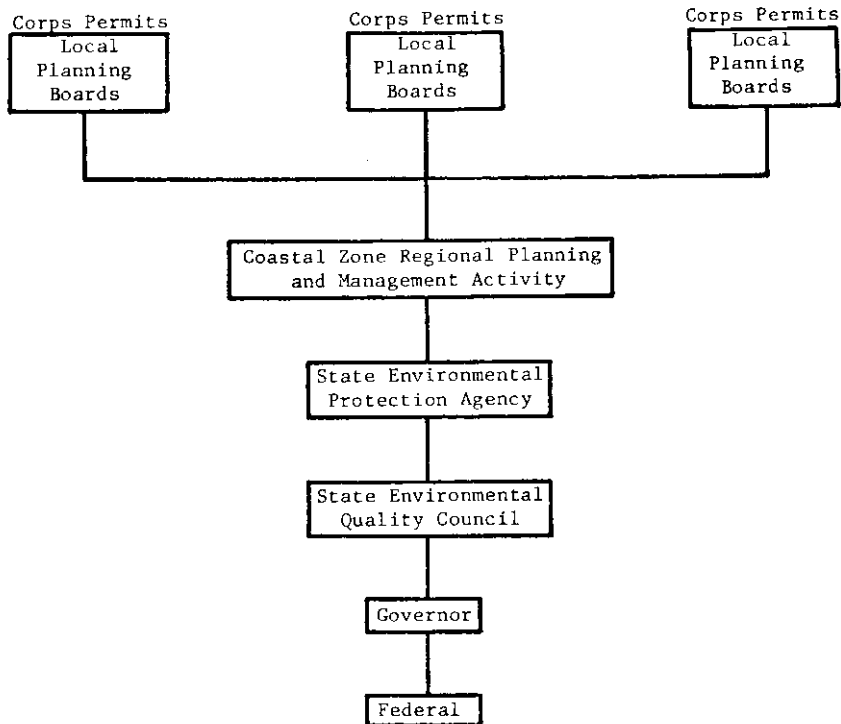


Fig. 1. A concept of a state environmental organization.

the agency through which appeals would funnel from the local areas.

The final structure which I believe is needed within the states is an Environmental Quality Council created by the Legislature and reporting directly to the Governor. This council need not be more than seven members. Its duties would be primarily that of an Environmental Grand Jury. It would adjudicate and recommend to the Governor courses of action where disputes have occurred between local interests and the federal government. Hopefully this would provide the proper balance which I have strived to structure in this paper where the economic, technical and environmental aspects of coastal zone management can be properly administered.

In structuring this concept within a state I have set aside the coastal zone as a distinct region because I believe that it is the area where the majority of environmental pollution problems now exist within the states.

In conclusion, I believe that the interaction of the states and local interests with the federal government will result in the pendulum swinging very shortly back toward the side where economic interests will begin to exert a profound effect in pollution management. The states must structure their organization where local economic interests cannot stymie the management processes in the state and federal government.

Lastly, I believe that an Economic Impact Statement should now parallel all environmental Impact Statements, and that both statements should be accorded equal priority by those who have the chore of granting or refusing permits.