

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY

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Dear Governor and Members of the Legislature:

On March 28, 1985, Governor Deukmejian submitted to this Commission Reorganization Plan No. 1 of 1985 for our consideration, review, and recommendation. The Reorganization Plan proposes to create a Department of Waste Management through consolidation of certain toxic and nonhazardous waste management activities currently performed by the Toxics Substances Control Division within the Department of Health Services, the California Waste Management Board, and certain portions of the State Water Resources Control Board and its nine Regional Water Quality Control Boards. Additionally, the Plan would establish a statewide, eleven-member Waste Commission, three seven-member Regional Waste Boards, and a nine-member Scientific Advisory Committee. The new Department and the associated Commission and Regional Boards would be located in the Health and Welfare Agency. The Plan as presented to the Commission would take effect on July 15, 1985 unless disapproved by either House of the Legislature within 60 days of the receipt of the Plan by them.

Each member of this Commission reviewed the proposed Reorganization Plan and the multiple submissions of additional materials provided by the Administration in response to requests made by the Commission for answers to questions arising from our review of the Plan. As part of that review, the Commission conducted two public hearings--one on April 10 and the second on April 24, 1985--to receive testimony regarding the proposed reorganization. Additional interested parties submitted written testimony to the Commission during the first 30 days of our statutorily defined review period. Overall, more than fifty individuals representing government,

industry, environmental interests, water interests, and public health expressed their respective viewpoints and, in a number of cases, offered recommendations for improving the Plan.

The proposal to reorganize State toxic waste management responsibilities is not new to this Commission. In 1983, our Commission undertook a seven-month study of the State's organization and management of certain toxic programs. After three public hearings, tours of 15 Superfund sites, and extensive research and analysis, we issued a report in July 1984 which presented over 30 recommendations for improved organization and management of these programs. Most important, though, was our conclusion that the State must centralize authority, establish accountability, and improve coordination between the various State agencies, and with the Federal and local government programs.

Virtually all parties agree that California must reorganize its toxic and nonhazardous waste programs to improve efficiencies and expedite the regulation and cleanup of toxic sites which threaten our public health. Nevertheless, witnesses testifying before our Commission expressed significantly differing viewpoints on how reorganization should be achieved, what form it should take, and what the consequences are of the proposed Plan. The remainder of this letter report will (1) discuss the issues of major concern to our Commission members, (2) summarize other concerns voiced by witnesses during our hearings, and (3) present the Commission's final conclusions and recommendations regarding Reorganization Plan No. 1 of 1985.

ISSUES OF MAJOR CONCERN TO THE COMMISSION

Organization, Authority, and Accountability

Since our Commission issued its report on State toxics programs in July 1984, our members and critics of the status quo have focused principally on two issues. First, there has been widespread belief that the Administration needs to centralize authority for these programs with particular emphasis on the cleanup of sites. Second, many individuals believe that the level of accountability and authority for these programs must be placed at a much higher level in the overall State government organizational chart (rather than as a division with the Department of Health Services).

The Governor's Reorganization Plan proposes to establish a new department reporting to the Secretary of the Health and Welfare Agency. Although this proposal centralizes various activities and heightens the level of accountability, authority may be spread across too many organizations since the Health and Welfare Agency Secretary, the director of the new department, the new State and regional Waste Commissions, and the State and Regional Water Boards in some cases where

responsibilities are delegated back to them, would each have certain powers.

At the same time, our Commission raises the question of whether the new department's director would have the ability to resolve the various disputes which would normally arise when attempting to coordinate with other State departments and boards involved in toxics. This is a particularly important issue since there would still remain some 12 other State agencies involved in toxics in one form or another (the California Highway Patrol, the Attorney General, the Air Resources Board, the Water Boards and others). The potential certainly exists for "turf" battles to arise. To this end, we believe that the point of ultimate and constant authority for toxic programs must be very high on the organizational chart. This, in turn, relates to the question of which State agency the new department should be placed under.

The Reorganization Plan proposes to place the new department under the Health and Welfare Agency arguing that, first and foremost, the regulation and cleanup of toxic dump sites is a public health issue. On the other hand, certain critics of the Plan state that the new department and associated commissions should be placed in the Environmental Agency because (1) these programs are environmental in nature as well as health related, (2) the new department will need to coordinate extensively with the Water Boards (as evidenced by certain proposed delegations to them) and the Air Resources Control Board, and (3) the new department's budget will constitute only about two percent of the Health and Welfare Agency's overall responsibilities and, therefore, would not receive adequate attention by the Health and Welfare Agency.

Both arguments are valid. The toxic threat most certainly is a public health issue. And the new department will have to coordinate with the risk assessment activities which are conducted by the Department of Health Services. At the same time, there will be the need for significant on-going coordination with the State and Regional Water Boards and the Air Resources Control Board. Regarding the issue of the attention the new department will receive within the Health and Welfare Agency, it is difficult to reach any absolute conclusion. Certainly it can be argued that the Health and Welfare Agency is already faced with probably the broadest and some of the most complex program responsibilities in government.

In summary, the Commission believes there are valid questions regarding the new department's ability to exercise the necessary authority to expedite its responsibilities since there will still exist a great deal of coordination with other organizations, the majority of which are outside the Health and Welfare Agency. At the same time, there is no clear cut basis for locating the department in the Environmental Agency.

Finally, the new department may be hampered due to the appearance, if not reality, of partially diffused authority.

State Waste Commission and Regional Waste Boards

There are three issues regarding the operations of the proposed Waste Commission and three Regional Waste Boards which concern our Commission. First, certain witnesses and members of the Little Hoover Commission believe that the highly visible and controversial nature of the toxics issue demands that an appropriate balance exist in the disciplines represented among the State commissioners and regional board members. For example, testimony revealed that the recycling industry is not specifically designated in the membership of these entities, and should be. Witnesses and members of our Commission also believe that the Legislature should appoint a certain number of the members. Generally, those individuals advocating changing the proposed representation and appointing authority argue that all precautions must be taken to ensure that no real or perceived biases exist in these important policy setting bodies. Although the proposed staggering of the commissioners' terms of office help to accomplish this, our Commission believes that the Plan would benefit from the provision for legislative appointments.

The second issue of concern regarding the State and Regional Waste Commissions is that of public access. Various witnesses voiced concerns that the newly created Waste Commission and Regional Waste Boards would not offer the public the same level of access as currently exists under the Water Boards. Specifically, these individuals raise questions about how and when the public, through the State and Regional Waste Boards, would have the authority to appeal a permit decision made by the new Department of Waste Management. Critics have argued that the Reorganization Plan provides less public access because appeals can only be filed through a Regional Waste Board after a permit decision has been made by the new department. In contrast, it is argued, the Water Boards currently conduct hearings on draft permits thereby allowing the public greater participation.

Secretary Swoap in his response to questions posed by our Commission has clarified, though, that since the new department would conduct a public hearing leading to the permit decision, the public is afforded adequate participation prior to a decision. Furthermore, the public would have two additional opportunities to participate through an appeal process conducted by the Regional and State Waste Commissions.

The reorganization proposal, through the institution of appellate review of the new department's decisions regarding permits, adds the opportunity of one more hearing than would be afforded under the current system of hearings conducted by the State and Regional Water Board system. Nevertheless,

public access may still be hampered. As written, the Plan is not clear regarding whether the public can petition the Regional Boards to act in cases where the Department has failed to act. Currently, the Plan only details a process for filing appeals with the Boards and State Commission where actions have occurred, such as the issuance or denial of a permit. We believe the public must be provided the forum to submit petitions for action where the new Department has failed to take an action.

The final issue of concern regarding the State and regional waste bodies is their ability to function independently with their currently proposed staffing. According to an addendum to the reorganization proposal, the Waste Management Commission would receive support equivalent to eight personnel years; the three regional boards would receive two personnel years each. The level of staffing for the Regional Boards and to whom the staff report raise questions as to whether these organizations would have sufficient personnel to independently analyze appeals of the new department's decisions, and to conduct their other functions which include rule making and the review and approval of the Statewide Waste Evaluation and Environmental Protection plan.

The Administration states that staff support to the Regional Waste Boards will be provided by staff located in the Emeryville, Sacramento, and Los Angeles regional offices of the new department. Although these staff would report through each Board's Executive Officer, there is no delineation between staff functions to clarify that these might be different staff than those departmental employees whose original decisions were being appealed. Similarly, there is no indication that the new department's "headquarter's staff" who "would review regional office staff's analysis" to "provide a recommendation to the Commission," would in fact constitute different staff providing an independent recommendation. Insufficient staff would force the Waste Boards and Commission to rely upon analyses prepared by the new department, thereby compromising their independence. Consequently, the part-time Commission and Boards could become "rubber stamps" for the department. We believe the Commission and Boards must be provided sufficient resources to ensure their independence.

Implementation Date of Reorganization Plan

As previously stated, the proposed Reorganization Plan would become effective by July 15, 1985 unless either House of the Legislature disapproved the Plan. Normally, such an effective date would not pose any unique problems for a reorganization of State activities. Virtually all reorganizations result in some level of disruption. However, the urgency for action in toxics has generated a significant

number of new program responsibilities, many of which are in the development stage. Most notable is the Department of Health Services' implementation of the \$100 million in bond monies for site cleanups, the underground tank program, and the regulation of toxic pits.

Because each of these programs are so very critical to the overall battle against the toxics threat, several witnesses and members of our Commission believe it is imperative that these programs not be disrupted by the concurrent timing of implementation of a Reorganization Plan. Therefore, our Commission concluded that the operational implementation date should be delayed.

Coordination With Local Government

Various witnesses representing environmental and public health perspectives at our April 10 hearing expressed concern that the Plan did not seem to address the issue of how coordinated State and local waste management activities would be affected by the reorganization. Some witnesses suggested that the importance of this coordination warranted the creation of an organizational unit whose chief responsibility would be to ensure adequate technical support to local hazardous waste enforcement programs.

In response to our Commission inquiry on this point, Secretary Swoap clarified that the Reorganization Plan stressed State programs which were proposed for transfer rather than relationships with local government agencies. He stated that the "preexisting relationship" with local government would be enhanced and the status of existing MOU's (memoranda of understanding) relating to the inspection of hazardous waste generators would not be changed by the reorganization. Nevertheless, we believe the Reorganization Plan should be clarified prior to submission to the Legislature to specify the methods of and points of designated responsibility for coordination with all appropriate local government agencies.

OTHER CONCERNS VOICED BY WITNESSES

Scope of Department's Responsibilities

A number of critics, including the former Chair of the State Water Resources Control Board and several environmentalists, maintain that the proposed reorganization should be made more comprehensive by including programs that relate to the regulation and monitoring of hazardous materials which have the known propensity of becoming health threatening wastes when they are not adequately controlled. Pesticides are the most discussed example.

The Director of the Sierra Club's legislative office testified that the Administration's proposal artificially omits the Department of Food and Agriculture's Pesticide Regulatory Program of which one of its stated goals is to keep pesticide residues out of drinking water supplies. Although the plan centralizes the State's water quality functions relating to water contamination from industrial sources, contamination from agricultural sources would become the responsibility of the new department only after it had become "waste."

As an alternative to transferring responsibility for regulating pesticides to the new Department, Assemblyman Lloyd Connelly at our first hearing proposed giving the new department or the Department of Health Services veto power over Department of Food and Agriculture pesticide regulations which he indicated might not adequately address threats to public health. However, this recommendation could not be instituted under the Executive Reorganization Act because it would constitute the creation of a new authority.

Our Commission concluded that there are both advantages and disadvantages to proposals for reorganization of a larger scope of responsibilities. However, there is no model to point to that demonstrates the success of one approach over others. Therefore, the Commission concluded that the scope of reorganization ultimately must be decided by the chief executive officer of the organization; in this case, the Governor.

Effect of Plan on State and Regional Water Boards

Various witnesses and members expressed uncertainty and concern as to the probable effect of the reorganization on the State and Regional Water Boards, and on the determination of water standards.

As originally proposed, the plan would shift 258.6 personnel years of staff and their associated workload to the new department, thereby reducing total staffing of Water Boards by approximately 32 percent. Our examination of assumptions underlying the proposed drastic reduction of Water Board resources, and extensive dialogue between the Health and Welfare Agency and the State Water Board, resulted in a new assessment of the workload to be transferred and a reduction in the number of associated positions.

Secretary Swoap testified that the Administration currently proposes to move 166.1 personnel years and the associated workload from the Water Boards to the new department. Several witnesses raised concerns that the transfer of responsibilities might delay or distort implementation of programs enacted in recent legislation. Specifically, some felt that the individual staff who have

been involved in issues such as leaking underground storage tanks or toxic pits should continue their participation in development of regulations and guidelines in those areas. As discussed in the following section, our Commission concluded that the adequacy of Water Board staffing under the proposal could not be finally resolved without instituting a detailed management audit which would exceed our Commission's strict time-line for making recommendations to the Legislature.

Although the Administration's Plan requires that the new department, "while managing and overseeing ... cleanups..." will "take into account recommendations from the Regional Water Quality Boards and other agencies" and the "Water Boards will provide recommendations which the Department must consider, to the maximum extent feasible, in issuing its permits," the Plan as submitted did not contain sufficient detail to ensure whether the stricter of two water quality standards would always apply in instances where the two agencies formerly had overlapping activities.

Based on testimony presented at our hearings, the Administration has demonstrated concern as to how standards should be set for groundwater contamination. However, our Commission believes that procedural and technical aspects of this issue should be addressed more fully in the proposal that is submitted to the Legislature.

Increased Efficiency Resulting From Reorganization

The Reorganization Plan cites several goals, including the following, which are related to efficiency:

- To centralize functions dealing with hazardous waste and eliminate duplication found in the current structure.
- To combine similar functions of managing solid waste and hazardous waste, in order to cultivate viable solutions to both in the areas of new treatment technology, recycling and resource recovery.
- To maximize the use of available federal funds by channeling them into a single department.

During our two public hearings, some witnesses challenged whether the Plan as submitted would truly result in increased efficiency and the elimination of duplication. Therefore, our Commission sought additional information which would clarify the specific sources and magnitude of improved efficiency under the Plan.

In a letter to our Commission dated April 18th, Secretary Swoap estimated that the proposed reorganization would eliminate duplicated activities for an increase in efficiency equivalent to 104.5 personnel years (PY's) from the following

sources: 25.4 PY's saved by eliminating duplicative permits now required by both the Department of Health Services and the Regional Water Boards; 46.4 PY's saved by consolidating many inspection, surveillance and enforcement activities; 25.8 PY's saved by eliminating duplication in hazardous waste site cleanup oversight and management; and 6.9 PY's saved in development of currently duplicated regulations.

The estimated savings of 104.5 PY's available for redirection in the new department was based in part on the assessment that 258.6 PY's could be transferred from the Water Boards to the new department without impairing the ability of the Boards to perform retained workload and participate with the department in some activities as specified in the Plan. Thus, the initial estimate of savings implied that the equivalent of 154.1 PY's (60 percent of the positions proposed for transfer) were associated with program activities which were not duplicated between the Water Boards and the Department of Health Services. For example, no increased efficiency from the elimination of duplicated activities is ascribed to the transfer of 60.8 PY's for oversight of underground tanks.

Our Commission was not immediately able to evaluate the Administration's initial estimate of increased efficiency resulting from the elimination of duplicated activities under the Reorganization Plan. However, as of April 24, 1985, the Administration was estimating that only 166.1 PY's (rather than 258.6 PY's) should be transferred from the Water Boards. This is very nearly equivalent to the estimated base of 154.1 PY's which were associated with the transfer of unduplicated workload. Consequently, estimated savings would be significantly reduced. However, without conducting a detailed management audit of responsibilities and staffing under the proposed Plan, our Commission must conclude that the extent of potential savings is currently indeterminate.

COMMISSION CONCLUSIONS AND RECOMMENDATIONS

The Commission believes there is no more critical issue before our society than the control of toxic waste. The urgency of the issue is unparalleled in recent times. While the status quo is unacceptable, the new directions our State government takes to combat the problem must result in substantial improvements. Specifically, our Commission believes that centralization of authority, heightened accountability, improved coordination and elimination of inefficiencies must function as the key benchmarks in evaluating a reorganization.

After deliberation of all the issues outlined in this letter report, as well as others, the members of our Commission voted unanimously to endorse the Governor's Reorganization Plan No. 1 of 1985 subject to the

Administration's incorporation of the following Commission recommendations into the Plan prior to its submission to the Legislature:

1. The new Department of Waste Management should report directly to the Governor and be a Cabinet level position, rather than being placed within the Health and Welfare Agency. The State Waste Commission and three Regional Waste Boards should retain the same organizational relationship to the new department.

Our Commission believes the placement of this department within the Cabinet is warranted because (1) the magnitude of the toxic threat has elevated it to a level of importance commensurate to the Cabinet; (2) toxics responsibilities cross numerous jurisdictions including health, environment, transportation, and others; (3) this program must be given the highest level of authority, visibility, and accountability to ensure its success; and (4) as a Cabinet level department, coordination with the other major departments and boards will have a better chance of not being negatively affected by interagency conflicts and "turf battles" requiring elevation through various review levels before final resolution.

2. The Administration should provide the State Waste Commission and Regional Waste Boards the authority to hear petitions for action by the new department in cases where it has not taken sufficient action in the eyes of the public. The Administration should also consider outlining the general procedures for such petitions.
3. The State Waste Commission and Regional Waste Boards must be provided adequate staff to perform their responsibilities without relying upon the new Department of Waste Management to conduct various analyses of issues it is reviewing.
4. Although the Governor should appoint the majority of the members of the State Waste Commission and Regional Waste Boards, the Legislature should be designated as the appointing authority for a certain number of the appointments.
5. The Administration should reconsider the representativeness of the membership of the State Commission and Regional Boards. It may be appropriate to substitute an additional local environmental or public health officer and an attorney for other members of the State Commission. Additionally, the Administration may want to stipulate that a number of the four private sector members engaged in hazardous or solid waste management should be engaged in the recycling or waste treatment industries.

6. The Plan should include a statement which will affirm the continuity of existing MOU's under the reorganization. Additionally, our Commission believes that the importance of efficient State and local coordination in waste management programs warrants the creation of a unit for this purpose in the new department. Accordingly, we recommend that the new department's Office of External Affairs should include an appropriate number of liaison positions for coordinating the new department's activities with local health jurisdictions. Also, the Administration should consider identifying similar liaison positions in the State Waste Commission to coordinate activities of the Regional Waste Boards.
7. To minimize the disruption and avoid conflict with the implementation of major programs such as the \$100 million Bond Act to accelerate toxic waste cleanups, the Administration should delay the implementation date of the reorganization by 120 to 180 days. However, this should not constrain the Administration from conducting preparatory work to allow for efficient implementation of the Plan.

With these recommended changes, this Commission urges the Legislature to allow Reorganization Plan No. 1 of 1985 to take effect.

Respectfully Submitted,

NATHAN SHAPELL, Chairman
James M. Bouskos, Vice Chairman
Senator Alfred E. Alquist*
Mary Anne Chalker
Albert Gersten, Jr.
Brooke Knapp*
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Senator Milton Marks
Assemblywoman Gwen Moore*
Mark Nathanson
M. Lester O'Shea
Jean Kindy Walker
Assemblyman Phillip D. Wyman

*Senator Alquist, Assemblywoman Moore, and Commissioner Knapp were not present.