Problems and Approaches to Areawide Water Quality Management

APPENDIX B

States Reports

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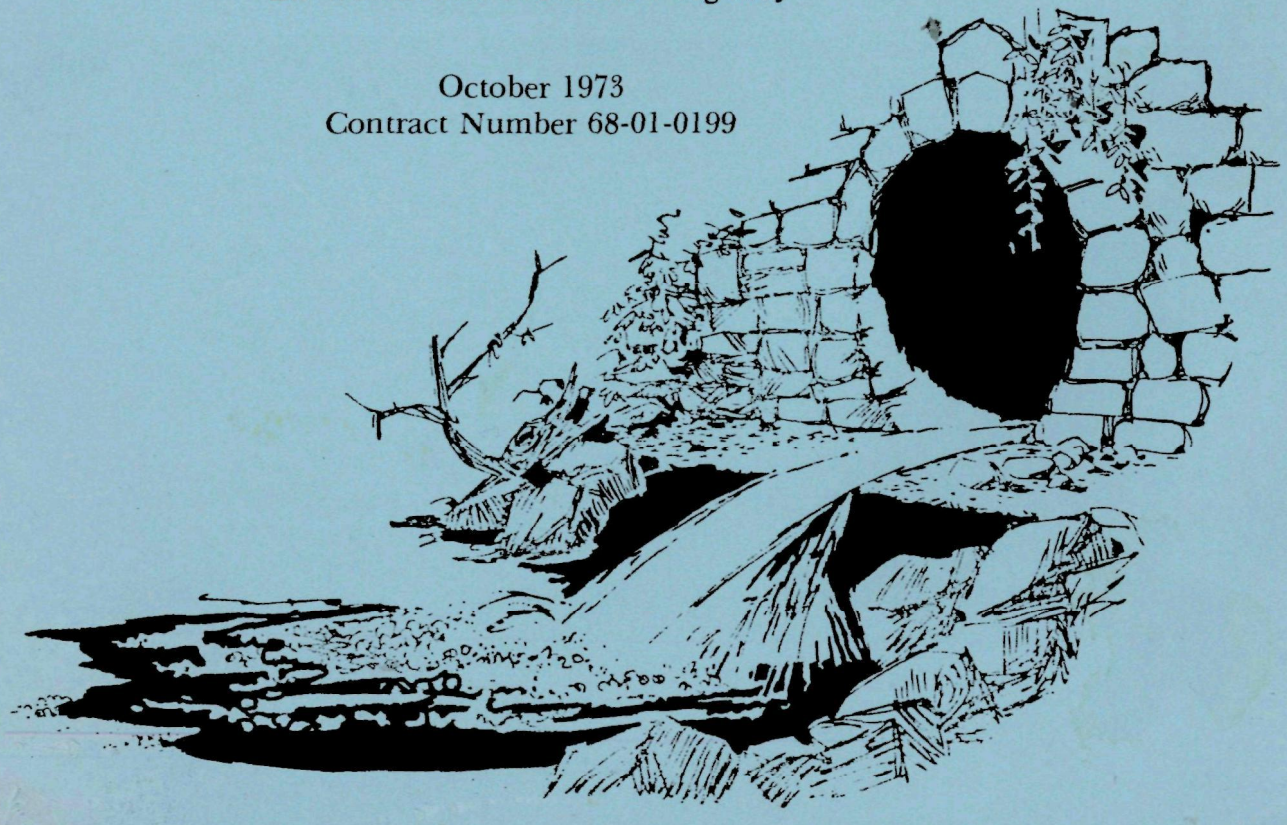

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EPA Review Notice

This report has been reviewed by the Environmental Protection Agency and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

ABSTRACT

This report delineates some of the legal and management problems which emerged from a legal and administrative review of the implementation of §208(c)(2) and its relationship with §208(b)(2)(C) of the Federal Water Pollution Control Act of 1972 (Act). The study on which the report is based is the result of a fifteen (15) month effort that included a review and analysis of state laws in the U.S. and an assessment of a selected sample of wastewater management organizations of varying areal jurisdictions. The study consists of a main report with two appendices separately bound plus an executive summary.

The review and analysis of the laws of the fifty states focused on (a) whether the organizations empowered to manage wastewater treatment facilities currently have adequate authority to qualify for federal assistance under the Act and (b) the authority to implement the organizational arrangements and policies described in Sections V and VI of the report.

A selected group of existing management organizations were examined as a means of (a) identifying and describing problems that may emerge in establishing wastewater management agencies in accordance with the provisions of the Act, and (b) developing alternative management models capable of satisfying the performance criteria developed in this report.

The primary focus of §208(b)(2)(C) is on two innovations in wastewater management: (1) adequate authority to manage wastewater activities on an areawide basis significantly broader than those currently operating, and (2) capability and authority to undertake water quality planning and management through control over point and nonpoint pollution sources and the control of the location of wastewater treatment facilities and other discharge sources.

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Professors Richard S. Howe and Nicholas L. White of Indiana University School of Public and Environmental Affairs and School of Law, respectively, directed the substantive work of this project and take editorial responsibility for preparing the final report.

Participating in the research and in the preparation of this report were senior researchers George A. Fruit, J.D., and Michael R. Gill, M.P.A., and researchers Gary Brown, Sandra Dukes, Walter Hasenmuller, Nina Hatfield, F. James Helms, Steven Johnson, David Mallon, Robert McConnell, John McGee, Cliff Potter, John Sharpe, William D. Welty, all from the Bloomington Campus of Indiana University.

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APPENDIX B

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INTRODUCTION

This appendix contains brief surveys of the laws of the fifty states plus the District of Columbia, Puerto Rico and the Virgin Islands as such laws relate to the legal capacity of waste treatment management agencies within the states to comply with the requirements of §208(c)(2) of the Federal Water Pollution Control Act Amendments of 1972 (Act). When §208 areawide planning and management is implemented within a state, the requirements of §208(c)(2) and related sections of the Act must be met by waste treatment management agencies in order for them to be eligible for federal grants for construction of treatment works. Pursuant to §208(c)(2) it is the Administrator of the Environmental Protection Agency (EPA) who determines whether the designated management agency meets these requirements:

> (2) The Administrator shall accept any such designation, unless within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority --
>
> (A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;
> (B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;
> (C) directly or by contract, to design and construct new works and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;
> (D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;
> (E) to raise revenues, including the assessment of waste treatment charges;
> (F) to incur short- and long term indebtedness;
> (G) to assure in implementation of an areawide waste treatment management plan that each participating community pay its proportionate share of treatment costs;
> (H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provision of an approved plan under this section applicable to such area; and
> (I) to accept for treatment industrial wastes.

When considering the impact of §208(c)(2), it must always be borne in mind what constitutes a waste treatment management agency under the Act. Under the Act, the word management envisions more than operation of a waste treatment works although "treatment works" is defined broadly in §212(B). A waste treatment management agency may have many functions, only one of which is the construction and operation of a publicly owned waste treatment works for treating waste waters discharged into its system.

A waste treatment management agency whose primary or sole function is the operation of a waste treatment works may comply with the requirements of §208(c)(2) if other agencies operating in the area served by the applicant satisfy the other requirements of the section. In other words, one waste treatment management agency may perform all the required functions, or several agencies operating in the area -- each performing different required functions -- may collectively perform all the required functions. One function is construction, operation and maintenance of publicly owned waste treatment works. Other functions include, but are not limited to, planning, regulation (including establishing of standards), identification of non-point sources of pollution and procedures to control such non-point sources, enforcement, and similar activities all of which when considered together constitute the plan to improve water quality in the area.

This format and the state reports follow the same order as the requirements appear in §208(c)(2). Each state report begins with a brief overview of the existing agencies charged with water quality control in the state. The state reports are arranged in order by regions -- I through X -- as established by EPA.

WHEN READING A STATE REPORT, THE CORRESPONDING PARAGRAPH IN THIS FORMAT SHOULD BE READ FIRST. In this manner, the state report which may be brief will be more meaningful. If a state has no specific statutory authority authorizing an agency to perform certain required acts or certain required functions, the analysis in the format may indicate that the authority may be implied and the reasoning supportive of the implication.

Due to the fact that many agencies operate under unpublished (or, at least, not readily available) rules and regulations, many state reports are not "complete" in this respect.

Basically, the reports concentrate on state statutory provisions which create and govern the management agencies. In states which permit local units of government to govern themselves -- i.e. states having "home rule" provisions for local governments -- reference is not made to the forms of government and administration adopted by such local units. There are numerous forms of government adopted by such local governments, and the local legislation is not readily available. In the final determination, however, of whether a designated waste treatment management agency will be acceptable to the Administrator, these duly promulgated and/or enacted local regulations and laws must be considered.

In nearly all states, there is a heightened awareness of the necessity for water quality control. Due to the fact that many states have only recently enacted environmental legislation and this legislation has not yet stood the tests of time or operation of the courts, the effect of this legislation is still uncertain. In other states, legislation which has been in force many years is not readily adaptable to, or does not provide an adequate legal basis for handling, current water quality control problems. The date on each state report indicates the year of the latest supplement to that state's laws which supplement was available at the time that the state report was prepared.

Suggested remedial legislation arranged in the same order as the format and state reports appears in separate Appendix A.

FORMAT FOR STATE REPORTS

Part 1

1.0 OVERVIEW

1.1 Description of Existing Agencies

A brief description of existing waste treatment management and pollution control agencies serves as an introduction to each state report. Existing agencies are identified and the general functions of each noted. Such general functions include planning, standard-setting, regulation and control, enforcement and treatment.

Since the study focuses on waste treatment management agencies, these agencies are specifically identified and described by function -- e.g., construction, operation and maintenance of publicly owned treatment works; identification of non-point sources of pollution and control thereof; etc. Existing management agencies in the states include the following types, among others: (i) municipal (serving its own constituents and possibly other municipalities or non-incorporated areas by agreement); (ii) county (which may or may not include some or all of the incorporated municipalities within the county); (iii) special district (comprised of two or more municipalities and possibly unincorporated areas, or one municipality and unincorporated areas); (iv) regional or areawide (generally larger than districts and comprised of many political subdivisions including inter-county agencies); (v) other.

Certain management functions may also be performed by state level agencies operating within the area of jurisdiction of other management agencies. The powers, duties and authority of these management agencies are only noted generally in this part of the report. More specific analysis is se forth in Part 2 in the context of the powers and authorities necessary for an agency (agencies) to be acceptable to the Administrator as having "adequate authority."

1.2 Schematic Diagram of Existing Agencies

To facilitate understanding of the reports, a schematic diagram or table of organization of existing state agencies is furnished.

Part 2

2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

Whenever reference is made to waste treatment management agencies, or to waste water management agencies, it is assumed that each includes, but is not limited to, treatment -- i.e., construction, operation and maintenance of treatment works. The overall concept of management includes functions in addition to treatment as defined in the Act. In other words, when "management" is considered, it is more than treatment -- it is overall management of the problems of water quality control. It should be noted that §208(c)(1), to which reference is made in §208(c)(2), describes such agencies as "waste treatment management agencies." Such agencies need not be, and in many instances should not be, limited merely to the operation of treatment works.

The provisions of §208(c)(2) establish criteria by which the Administrator must evaluate waste treatment management agencies applying for construction grants from EPA. The Administrator shall accept the designated waste treatment management agency making application unless the agency does not meet the criteria. Generally these criteria require that such management agencies be in compliance with an areawide waste treatment management plan adopted pursuant to §208(b). This areawide plan includes, in addition to providing for treatment of waste water (collected residential, industrial and commercial sewage) discharged into its system, procedures for identifying and controlling nonpoint sources of water pollution such as agricultural runoff, mine-related sources, construction related sources and salt water intrusion. In many states, the agency or agencies responsible for the operation of publicly owned treatment works have little or nothing to do with identification and control of nonpoint sources of water pollution. Typical examples of agencies having authority over nonpoint sources include department of agriculture (agricultural runoff), department of forestry or conservation (silvaculture runoff), department of building inspection (construction runoff), department of mines (mine-related runoff), and the board of health which may become involved if the safety of water supplies is endangered. Some of these responsibilities have now been

consolidated in water quality control agencies and similar agencies, but lines of authority and responsibility are still unclear in many instances. One object or purpose of the areawide plan is to coordinate or consolidate these responsibilities to overcome the existing uncertainties and to provide more efficient control and enforcement. Some agency or agencies -- not necessarily the agency operating a publicly owned waste treatment works -- should be responsible for considering, evaluating and implementing the whole range of options available to improve water quality including, but not limited to, recycling, acquisition of land for treatment purposes and disposal of residuals. §208(b) which mandates the areawide plan certainly envisions this.

Effect of Areawide Plans

In several sections of §208(c)(2), specific reference is made to the areawide waste treatment management plan as it relates to waste treatment management agencies. In §208(c)(2)(A), the management agency must be authorized "to carry out appropriate portions of the areawide waste treatment management plan." It is assumed that "appropriate portions" is determined both on a geographical and on a functional basis. A waste water management agency operating, or proposing to operate, a waste water treatment works as its function must "carry out" this functional portion of the areawide plan in the geographical area assigned to it.

When such areawide plan is developed, analysis can be made as to the legal capacity of an existing agency to carry out its appropriate portion (function) of the areawide plan. The areawide plan set forth in §208(b)(2) shall include, but not be limited to, the following:

(A) Identification of treatment works necessary to meet anticipated municipal and industrial waste treatment need for a twenty-year period.

(B) Establishment of construction priorities.

(C) Establishment of regulatory programs.

(D) Identification of measures necessary to carry out the plan.

(E) A process to identify (i) measures necessary to carry out the plan and (ii) the economic, social and environmental impact of carrying out the plan.

(F) A process to (i) identify, if appropriate, agriculturally and silvaculturally related nonpoint sources of pollution and (ii) set forth procedures to control such sources.

(G) A process to (i) identify, if appropriate, mine-related sources of pollution and (ii) set forth procedures to control such sources.

(H) A process to (i) identify construction activity related sources of pollution and (ii) set forth procedures to control such sources.

(I) A process to (i) identify, if appropriate, salt water intrusion, etc. and (ii) set forth control procedures for such intrusion where such procedures are otherwise a part of the waste treatment management plan.

(J) A process to control the disposition of all residual waste generated in such area which could affect water quality.

(K) A process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

As noted previously, the functions of the waste treatment management agency (grant applicant) may, and in many instances will, encompass more than operation of treatment works. This report is concerned, however, with the grant procedure for construction of publicly owned treatment works, and that function -- operation of treatment works -- is emphasized. It must be remembered, however, that some agency or agencies operating within the geographical area covered by the areawide plan must be capable of carrying out the other required functions of the plan. It should also be borne in mind that many agencies legally capable of operating treatment works may not, for example, have the legal capacity to regulate and control non-point sources of pollution or to perform other required functions of the areawide plan.

Ability to Manage Effectively

In §208(c)(2)(B), the management agency must be authorized "to manage effectively waste treatment works . . . in conformance with any plan required by subsection (b) of this section (§208)." The ability to manage "effectively" is not considered a legal question, but rather a management analysis question -- i.e., is the agency adequately staffed with qualified personnel, etc. The ability to manage effectively may be affected by state laws, or lack thereof, which hinder compliance with the requirements of §§208(c)(2)(C)-(I). To this extent, the required ability to manage effectively is consequentially treated in parts 2.1 through 2.7 of the reports.

§§208(c)(2)(A) & (B) Not Covered in State Reports

For the foregoing reasons analysis of subsections (A) and (B) of §208(c)(2) are limited or omitted in the state reports. The remaining subsections, (C) through (I), are considered.

2.1 Authority, Directly or by Contract, to Design and Construct New Works, and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

This necessary authority presents a rather straightforward question as to a management agency's capacity to contract and to operate a waste treatment works. Existing management agencies whose function is the operation of treatment works obviously have such authority. The exercise of such authority may, however, be subject to approval of, or authorization by, a legislative body or superior administrative agency. In addition, there are procedures which must be followed when entering into contracts. These approvals and authorizations should be obtained before the grant application is made. These do not, however, detract from the ability or capacity to contract, but merely establish the procedures which must be followed.

An areawide plan may require the management treatment agency to serve users (dischargers of waste water) from areas beyond its political jurisdiction. There may exist legal constraints that would prevent an agency from furnishing such services. As an example, the areawide plan may call for a city sanitary sewer district to serve neighboring villages and unincorporated

areas outside its jurisdiction. In many cases this can be overcome by the agency's power to contract with such "outside" users to furnish the treatment service.

In most states, this requirement of authority to construct and operate treatment works presents no unique or unusual legal problems.

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

This necessary authority also presents a rather straightforward legal question in most states, and no unusual problems are encountered. In some states, however, the agency's authority to accept grants and funds may be subject to approval of a planning agency or superior administrative agency. Such approval, if required, should be obtained before the grant application is made.

In some states, statewide, regional or areawide agencies may receive the funds or grants and disburse them to the operating management agency. If such receiving and disbursing agencies have the authority to divert grant funds, a substantial problem is posed by §208(d) which provides that, after the designation of a waste treatment management agency has been accepted by the Administrator pursuant to §208(c), "the Administrator shall not make any grant for construction of a publicly owned treatment works under section 201(g)(1) within such area except to such designated agency and for works in conformity with such plan (areawide plan)." This problem is easily averted in several ways. First, the areawide plan can limit the function of such disbursing and receiving agency to that of a conduit and/or auditor. Second, the terms of the grant will prohibit such diversion, and such terms will control -- i.e. the funds can only be used as set forth in the grant. If, however, this appears to be a problem in a particular state, remedial legislation should be enacted to overcome it. To the extent that such receiving and disbursing agencies perform services of value to the project, provision for reasonable compensation for such services should be part of the grant application.

In some states the authority to accept grants, particularly federal grants, is provided by statute. In others, such authority may be implied. It is noted in the reports whether there is express statutory authority or whether it is implied, or, in some very few instances, whether a state statute poses a problem.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

This necessary authority to raise revenues, including the assessment of waste treatment charges, presents several legal problems. First, the agency's authority to raise revenues may be limited to levying, or may include a mandate to levy, taxes or assessments on users (dischargers) which taxes or assessments are not based on the characteristics of the waste waters received from the user. Second, the authority to charge users may be a general authority to charge with no statutory requirements that the characteristics of the discharge be considered when determining the charge for services.

These problems arise since the authority to assess waste treatment charges is qualified by several provisions of §204(b). §204(b)(1) sets forth certain conditions which must be met if a grant application is to be approved. Among these are: (i) the applicant has a system of charges that assures that each category of user will pay its proportionate share of costs of operation and maintenance (including replacement) of waste treatment services, ("user charges"), and (ii) the applicant has made provision for industrial users to pay to the waste water treatment agency that share of the federal portion of construction costs of new facilities allocable to treatment of such industrial users' wastes ("industrial cost recovery"). These two qualifying factors are considered in the reports. (See parts 2.3.1 and 2.3.2 following.) §204(b)(2) requires that criteria to determine the adequacy of waste treatment charges include all factors affecting costs of treatment such as strength, volume and delivery flow rate.

It should be noted that only some states statutorily provide for assessing treatment charges based on characteristics of the discharges being treated. Most states provide, if at all, that treatment agencies have the general power or authority to charge for their services. It is noted in the reports whether this has been construed to include the assessment of waste treatment charges based on characteristics of discharge or, if not, whether it is reasonable so to do under state laws. (See part 2.3.1 following.)

With respect to publicly owned and operated treatment works, waste treatment charges are not usually subjected to regulation by other administrative agencies such as public utilities commissions. If such regulatory authority exists, however, few or no problems are foreseen, since this is an administrative

procedure and both are public agencies with no privately-owned, profit-making utility company involved.

The report is limited to use of a charge system to recover costs of operation and provide for replacement (user charges), and to repay costs of construction (federally and locally financed industrial cost recovery). The use of waste treatment charges as a method of regulation or as an incentive to "clean-up" discharges into the system is not considered in the reports.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

As noted in preceding part 2.3 and as provided in §204(b)(2), the ability to assess user charges must include the ability to charge based on such characteristics as volume, composition and delivery flow rate of effluent discharged by the user. "Category of user" is deemed to include the following general categories: (i) residential, (ii) commercial, (iii) industrial and (iv) other. The "other" users may include public and institutional users. Industrial users may be subcategorized since some types of industry generate more treatment expense due to the characteristics of their effluent. Such industries generating effluent requiring more costly treatment include primary metals, chemicals, petro-chemical, paper and allied products, and food and allied products.

If each "category of user" is to pay its "proportionate share" of costs of operation and maintenance, the management agency should have the legal ability to assess waste treatment charges based on the volume, composition and delivery flow rate characteristics of the effluent discharged into the system for treatment. In many states, there is no specific statute authorizing user charges based on characteristics of the discharge of the user, since it is provided only that the waste treatment agency may, or shall, charge for its services. In some instances this is qualified by requiring that charges be reasonable or is qualified in some other general way. If a waste treatment agency is expressly authorized to charge for its services, it is only reasonable that it can charge each category of user for its proportionate share of treatment costs unless prevented from doing so by a specific statutory provision.

One example of a system of charges, or method of charging, that is unrelated to costs of treatment is the assessment based on front footage (or valuation) of the property served. While this might be appropriate for payment of costs of construction of collection systems, it cannot be deemed acceptable when a user is required to pay its proportionate share of treatment costs. Such method, alone, or in conjunction with a volume only charge system, will not meet the requirements of the Act.

There are many technological as well as practical considerations in determining whether a particular system of charges by a treatment agency meets the requirements of assuring that each category of user pays its "proportionate share" of treatment costs. These considerations are not part of the reports.

It is noted in the reports whether there is specific statutory authority for the waste treatment agency to make charges based on volume, composition and delivery flow rate characteristics. If there is no such specific statutory authority, it is noted whether it can reasonably be implied from an express general power to charge for services. If there is a specific statutory authority providing for a method of charging inconsistent with charging based on characteristics of effluent, this is noted.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Not only must the cost of treatment of industrial discharges be recovered from industrial users, but the federally funded share of capital costs of construction attributable to treating such industry's wastes must also be recovered from such industrial users (industrial cost recovery). Thus, the authority to assess waste treatment charges (or raise revenues) must include authority to satisfy this requirement. As in the case of treatment costs, this provision prevents the subsidizing of industrial users. While there are some benefits to industrial users (i.e., economies of scale, interest-free funds, etc.) these will be generally available to all industries without competitive advantages among industries.

Regulations (18 CFR 601.34, June 1970) and Guidelines under the earlier federal laws provided for an equitable system of

cost recovery including capital costs. In order to ascertain what portion of capital costs were attributable to treating industrail wastes, several formulas were recommended. These formulas included allocation by volume, by volume and loading, and by quantity or quality based on total cost or average unit costs. Recovery was to be through charges, connection fees or other techniques permitted by state or local law.

The laws in many states either permit or require treatment agencies to recover their capital costs (i.e., non-grant portions). This is particularly true in the case of revenue type funding in which systems of charges must be devised to service the debt (pay principal and interest) over the lifetime of the project. This presents a problem in some states in which there is specific authority to recover capital costs funded by revenue bonds, but no provision to recover capital costs funded from other sources.

§204(b)(3) provides that a grant by the EPA to the treatment agency creates an obligation on the part of the treatment agency to earmark the funds for use by the treatment agency and/or repayment to the federal government as required by the Act and terms of the grant. If a treatment agency can compute its charges so as to pay off its debts or meet its obligations, it would appear that the treatment charges could, and should, include the amounts sufficient to satisfy the obligation and thus satisfy this requirement of §204(b)(1)(B).

In reviewing a grant application, a question is presented as to whether a treatment agency must have a legally enforceable commitment from such industrial users to repay this portion (industrial cost recovery). This problem is rather simple if only one or two large industries are involved, but, if many small industries are involved, the problem is more complex. As an example, if the industrial cost recovery is included in the rates for service charged industry, what happens if industry stops discharging into the system? On the other hand, will an industry commit itself to payment for services it may not need if it discontinues business? There are a number of ways in which these questions can be answered and the problems avoided. For example, an assessment can be levied on the real estate of the industry for its share of the costs. The assessment becomes a charge against the real estate with any owner thereof subjected to paying the assessment. As another example, the case of a few large industries, they may, jointly or severally, agree to repayment. To make it more attractive for industry,

this could be deemed as a right or license to discharge which right could be assigned to another user. In the case of many small industries, inclusion of industrial cost recovery in the service charges to such category of users may suffice, since the risk of non-repayment is spread over so many users as to be negligible.

It is noted in the reports whether there are specific statutory authorities providing this legal capacity to recover from industry, or, as noted in the case of user charges, whether this is included within the general power or authority to charge for waste treatment services or in the power to contract with industry to furnish services.

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

Basically this requirement involves the waste treatment management agency's authority to borrow, or in some manner to defer payment for, the capital costs of construction. The various methods of incurring debt include the authority to issue (sell) general obligation bond or bonds to be repaid from special funds (i.e., revenues, assets of the management agency, etc.). Due to provisions in §204(a)(4), this authority is necessary to assure payment of the non-federally funded portion of the cost of construction.

The states vary considerably on the interpretation of constitutional or statutory debt limitations. In most instances, special fund or revenue types of financing are not subject to such debt limitations. In other instances, the debt limitations may or may not apply to the obligations of special districts such as sanitary districts.

In some states, there is express authority for interim or short-term financing during the period of construction. In other states, short-term financing is an integral part of long-term financing. The ability to incur short-term indebtedness may be included within the scope of the ability to contract since contracting generally results in the agency incurring an indebtedness. Another type of short-term indebtedness is the bond anticipation note. A similar device might be used with repayment from grant proceeds instead of proceeds from the sale of bonds.

The legal ability to incur short-term indebtedness is not a problem in most states if the management agency has the ability to contract or to incur long-term indebtedness. Emphasis in

this part of the reports is, therefore, on the legal ability to incur long-term indebtedness.

2.4.1 General Obligation Funding.

It is noted in the report whether the management agency has the authority to issue general obligation bonds (i.e., bonds secured by the general credit of the political subdivision or subdivisions of which it is a part). In most instances a management agency will not have such authority unless the management agency is a political subdivision such as a county, city or municipality, which has this general power in order to raise revenues for many public purposes, not just waste treatment. If the management agency is an entity other than a political subdivision of general jurisdiction, the power to issue general obligation bonds secured by the general credit of the political subdivision is not usually possible.

If the management agency has such authority, any conditions upon such issuance will be noted. Such conditions include debt limitations and approval of the electorate. In states in which these conditions exist, they should be met by the time a grant application is considered by EPA. In other words, there should be evidence that the debt limitation is not exceeded and/or the required voter approval has been obtained.

2.4.2 Special Funds and Revenue Funding.

A prevalent method of financing is the issuance of revenue bonds to be repaid from, and secured by a pledge of, the revenue from operation of the waste treatment works. In many instances, debt limitations and similar constraints do not apply. The reports note the management agency's authority to utilize this type of financing and the constraints upon its use.

2.4.3 Other Methods of Financing.

Other types of financing include borrowing from a public corporation which has issued bonds or has funds available from the general revenues of the state. Long-term lease/purchase agreements are also utilized in some jurisdictions. If there is statutory authority enabling these methods to be used by the management agency, it is noted in the reports.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

It appears that the purpose, among others, of this provision of the Act is to discourage the use of federal funds to construct a treatment works in one community which will then operate it so as to subsidize the users within such community at the expense of other communities being served by the same treatment works. It is a further implementation of the avowed purpose of the Act that each user pay the cost for treatment of its effluent.

This provision is not construed merely to apply to the participating community as a user -- i.e., discharging effluents generated by publicly owned facilities such as municipal building, incinerators, etc. It is construed to apply to the participating community as a whole including all users in the community.

For purposes of determining whether a waste treatment management agency has the authority to assure that each participating community pay its proportionate share of treatment costs, it is assumed that a "participating community" is (i) a political subdivision and not merely a neighborhood or unofficial area within a political subdivision or (ii) a well-defined unincorporated area outside a political subdivision. If only one community is being served by the waste treatment management agency, this authority would not appear to be relevant.

When two or more communities are being served, several different situations could exist. As an example, several communities may voluntarily agree to join together to be served by the treatment management agency pursuant to the areawide plan. The agreement to join together could define the proportionate share of treatment costs of each community and the categories of users within the community. Interlocal cooperation acts existing in some states facilitate such agreements. As another example, a treatment management agency operated by one community may serve other communities pursuant to agreement between the serving community and each community being served. Decisions are made at the time of the agreement between the communities as to the sharing of costs of treatment. Such decisions may be deemed political decisions in that factors other than sharing treatment costs may be considered. As an example, one community may not desire the treatment works located within its confines and is willing, therefore, to pay

more than its proportionate share of treatment costs to avoid this. If a value is placed on not having the treatment works located within the community, then the community should pay for this and does so in the system of charges that is agreed upon by the communities involved. In such instance, this system of charges may not represent a division of treatment costs among the communities based on the cost of treating the discharge of each community, but if the apportionment is openly and freely agreed upon by the participating communities, it should be acceptable as providing that each will pay its proportionate share as required by this section of the Act.

Very few states have legislation specifically granting to a waste treatment management agency the authority to assure that each participating community pay its proportionate share of treatment costs. It is apparent that the states have assumed that any agreement among communities for sharing treatment costs will be equitable or the communities would not have agreed to cooperate in treatment. Under the Act, it would appear that the required areawide plan which mandates cooperation among communities should provide for an equitable method of allocation which would meet the "proportionate share" requirement.

The authority to assure that each participating community pay its proportionate share of treatment costs is closely linked with the authority to charge users within the community for their proportionate shares. Thus, as in the case of proportionately charging different categories of users, the authority generally of the waste treatment management agency to charge for its services may include by implication the authority to assure that each participating community pay its proportionate share. Whether the community charges the users within the community and then remits to the treatment management agency, or whether the treatment management agency charges the users directly, it appears that the authority to charge different categories of users for services should encompass the authority to assure that each participating community pay its proportionate share of treatment costs.

The reports indicate whether there is any specific statutory provision granting authority to a waste treatment management agency to assure that each participating community pays its proportionate share of treatment costs. If there is no such specific authority -- which is the situation in most states -- other powers or duties of the treatment management

agency from which such authority can reasonably be implied will be noted.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of An Approved Plan Under §208(b) Applicable to Such Area. [§208(c)(2)(H)].

This necessary authority poses somewhat unusual legal problems. If a treatment management agency is servicing a municipality by treating its wastes, can it "cut-off" the service if the municipality does not comply with any provision of an approved areawide plan? It is doubtful that such agency could or would do this on a municipal-wide scale, since residential users and public users (schools, hospitals, etc.) would be affected. A somewhat more restrained and reasonable application of this authority to refuse to receive wastes is (i) that it apply prospectively to deny new or additional "hook-ups" with the system (the effect of which would be to prevent further development and growth of a community or subdivision) until compliance is had with the areawide plan and (ii) that such authority include lesser sanctions such as penalties, surcharges and similar charges. A third possibility is the authority of the treatment agency to cut-off particular users within the municipality if the municipality's failure to comply is based on that particular user's or category of user's discharge. The most common situation might involve industrial users which the municipality permits to discharge effluents into the system while in violation of the areawide plan. This right or authority to cut-off such industrial users is treated in part 2.7 of the reports in situations in which the industrial discharge into the system is in violation of pretreatment standards or similar regulations.

It should be noted that this authority to impose a sanction on a municipality or subdivision thereof applies whenever the municipality or subdivision fails to comply with <u>any</u> provision of an approved areawide plan. Thus the sanction may be imposed even though the failure to comply with the areawide plan is for a reason not related to the operation of a treatment works or treatment of point source effluents. As an example, a municipality could be in violation of the provisions of an areawide plan by failing to control construction related sources of water pollution. A literal interpretation of this requirement is that, irrespective of the nature of the failure to comply with the areawide plan, the authority to impose the sanction is required.

Inasmuch as the sanction is to be applied to a municipality or a subdivision thereof, it is assumed that, in the situation in which an entire community is in noncompliance the treatment management agency and the noncomplying municipality are not the same entities. This is assumed for the reason that a municipality would not be in a position to cut-off itself or otherwise penalize itself.

This part of the reports treats briefly the authority to "cut-off" existing municipalities being served. Parts 2.6.1 and 2.6.2 treat more extensively the prospective application to deny additional "hook-ups" and the use of other sanctions.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

The authority to refuse to receive wastes from a municipality can reasonably be interpreted to mean an authority to deny permits for new or additional "hook-ups" if the municipality is, or will be by virtue of such new or additional "hook-ups," not in compliance with the areawide plan. This, in effect, is the authority to declare and enforce a moratorium on new construction and development until the community complies with the areawide plan. Not only developers, but others interested in the growth of an area are vitally affected by exercise of this authority.

It is noted in this part of the reports whether the treatment management agencies either alone or in conjunction with regulatory agencies have such authority. In some instances, the reports indicate the state level or other agency which would have such authority within the area encompassed by the areawide plan.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

This authority differs from the authority to charge for treatment, since the authority to charge relates to charging users or categories of users while this authority to penalize applies to municipalities. It is, therefore, relevant whether a treatment agenay may assess penalties and surcharges against a municipality and not merely users within the municipality.

The reports note where this can be done by waste treatment management agencies within the framework of existing statutes. As in the case of the authority to deny new "hook-ups," the reports are limited. It is noted in the reports when this authority to impose sanctions is exercisable by the waste treatment management agency alone, in conjunction with another agency, or only by a state level agency.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

In most states this required authority presents no problem as it is either expressly authorized or reasonably implied from express powers to treat wastes generally.

One problem which may arise in servicing industrial wastes is whether such servicing is the unlawful use of public funds to benefit a private industrial user. This appears to be no problem if the treatment agency can, as it must in order to qualify for a grant, charge such industrial user its proportionate share of costs of treatment (discussed in part 2.3.1). The reports, therefore, consider this problem only if there is no authority to charge categories of users for their proportionate share of costs of treatment.

If a treatment agency must have the authority to accept for treatment industrial wastes, it is implicit that, it must also have the authority (i) to set the criteria for acceptance of such wastes in order to protect its treatment works and, (ii) if such criteria are not met, to refuse to accept such industrial wastes for treatment. §208(b)(2)(C) requires that the areawide waste treatment management plan establish a regulatory program to assure that any industrial wastes discharged into a treatment works meet applicable pretreatment requirements. Pursuant to §307(b) of the Act, the Administrator must publish regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works which pollutants are determined not susceptible to treatment or which would interfere with the operation of such treatment works. This section of the Act does not prevent establishment of pretreatment standards by state or local laws not in conflict with the federal standards. Thus the treatment management agency must have the right to refuse any discharge which violates federal, state or local pretreatment standards or which would damage or disrupt its treatment works and thus endanger water quality.

In situations in which the treatment management agency has authority to contract with industry for treatment of its wastes, the contract terms can provide for pretreatment and the right to refuse wastes which do not comply therewith.

The reports, as a result, include comments with respect to the authority of a waste treatment agency to refuse to accept industrial wastes as well as such agencies' authority to accept industrial wastes for treatment. In many instances the authority to accept industrial wastes is implicit from the general power to treat all sewage. In other instances, state statutes specifically provide this authority.

Part 3

3.0 SUMMARY

Following the preceding analysis, a brief summary is set forth stating whether, under existing state law, waste treatment management agencies can meet the requirements of the §208 (c)(2) and related sections in order to qualify for federal grants for construction.

3.1 Deficiencies

Specific deficiencies and/or problems in complying with the requirements of §208(c)(2) are noted. Suggested legislation to overcome the deficiencies or avoid the problems is included in Appendix A.

Part 4

4.0 BIBLIOGRAPHY

Source materials and other articles, if relevant, are listed in the bibliography. In some states, there are few, if any, articles concerning their water quality control problems and/or waste treatment management.

STATE REPORTS

REGION I

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

CONNECTICUT REPORT
(1972)

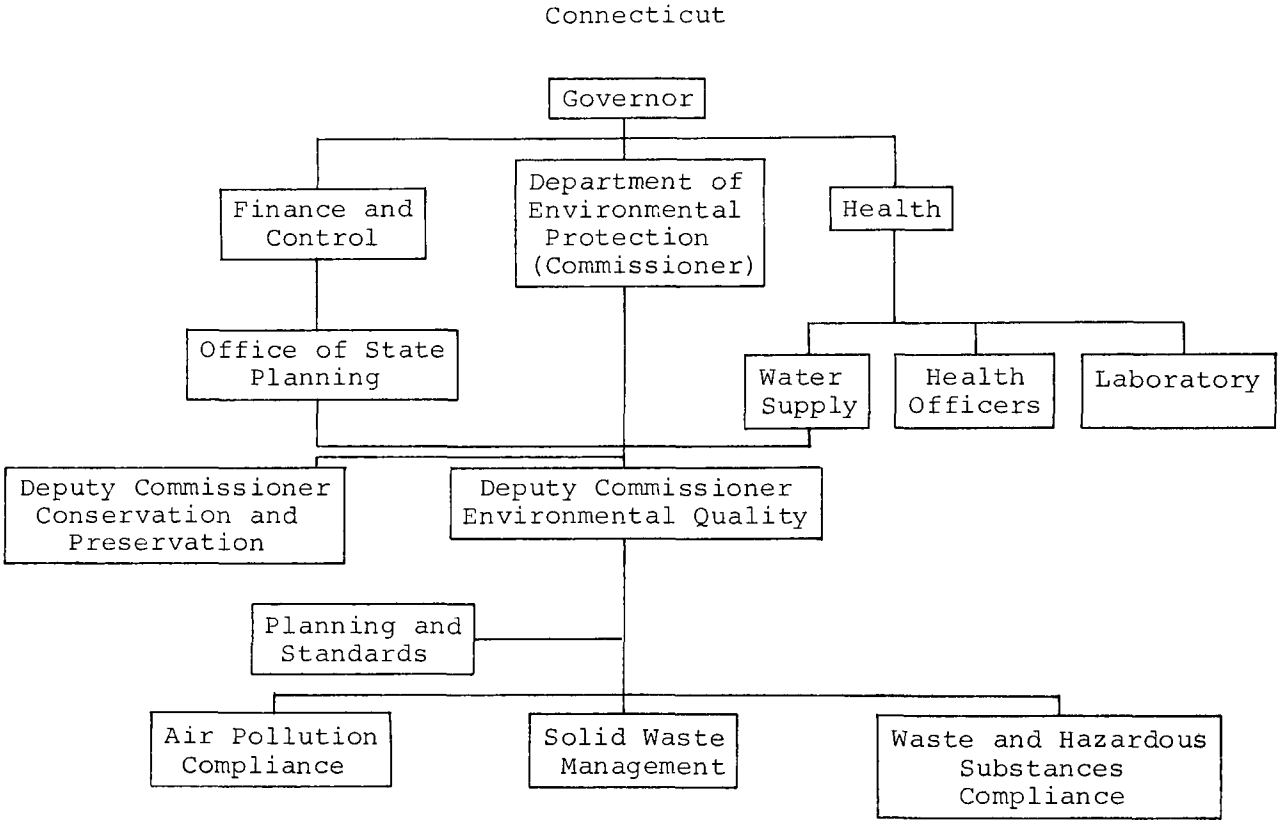
1.0 OVERVIEW

1.1 Description of Existing Agencies

Connecticut has centralized all state-level water planning, enforcement and standard setting by assigning all these functions to the Connecticut Environmental Protection Department.[1] All sewage works construction first must be approved by the department and the department may order a municipality to build a works should it be regarded necessary.[2]

Sewer authorities[3] may be created by "each municipal organization having authority to levy and collect taxes" as well as any community or region so empowered.[4] These are the sole authorities used for sewage treatment in Connecticut. They may be combined into multiple sewer systems serving more than one municipal area.[5] Sewer districts, specifically designated areas which may create a sewer authorities, have certain powers in addition to those granted to sewer authorities. These will also be noted.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Sewerage authorities are given the power to "acquire, construct and operate" sewerage systems.[6] This would fully satisfy this provision.

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

No statutory provision exists insofar as funding is concerned outside of the Environmental Protection Departments Legislative directive to

> apply for and accept any funds or other aid and to cooperate and enter into contracts and agreements with the federal government . . .[7]

This provision should not preclude local authorities from also applying for grants, even though this method is not provided by statute.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Sewer authorities may charge their customers for sewage treatment by imposing waste treatment charges.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Sewer authorities must charge "fair and reasonable" rates giving consideration to the kind, quality and quantity of waste discharges.[8]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Sewer authorities may "levy benefit assessments upon lands and buildings in the municipality which . . . are especially benefitted [by the authority]."[9] The sum of these assessments is not to exceed the extent of the special benefit incurred.[10] This assessment power permits all authorities to recover an industrial user's portion of a facility's construction costs.

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

Sewer authorities are empowered to issue bonds.

2.4.1 General Obligation Funding.

General obligation bonds may be issued by all taxing authorities, including sewer authorities, for sewer systems.[11] This power is limited to three and three-quarters times the total sewerage system revenue for the previous fiscal year.[12] Such a limitation might make these bonds small in value. However, since any portion of the bond issue which is guaranteed by the state or federal government is exempt from this limitation,[13] larger amounts of revenue could be raised if the bonds are backed by state or federal funds.

2.4.2 Special Funds and Revenue Funding.

Revenue bonds, pledging the facility's revenues for repayment, are also available for financing sewerage authorities.[14]

2.4.3 Other Methods of Financing.

One further bond exists for sewer authorities. These bonds are hybrids which are secured by both the full faith and credit of the municipality as well as by the revenues coming from its facilities.[15] While no limitation is mentioned in the authorizing statue it is presumed that the same restrictions as under General Obligation Funding would apply since the bond pledges the municipality's full faith and credit.

Authorities may also receive up to 30 percent financing from the state under Connecticut's Clean Water Act.[16]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan that Each Participating Community Pay its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Municipalities may contract with each other to form joint sewer authorities.[17] Since charges must be "fair and reasonable," it is assumed these authorities' contracts must be equitably apportioned.

2.6 Authority to Refuse to Receive Any Waste From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of An Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Any refusal to accept waste from a community should require specific statutory authorization. No such authorization exists.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

While the denial of hook-ups is not specifically authorized for either sewage system, sewer districts "may adopt ordinances with penalties to secure their enforcement" to carry out their purposes.[18] This might be used to deny any proposed expansion which runs counter to the regional plan. Moreover, all sewer authorities might use the Environmental Protection Department's power.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

Penalties, surcharges, and so forth will be available to areas which create sewer districts.[19] Other sewer authorities have no such provision.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Sewer authorities may collect "sewage" which is "any substance, liquid or solid, which may contaminate or pollute or affect the cleanliness or purity of any water."[20] Industrial wastes may be either prohibited or regulated to prevent the discharge of substances harmful to the systems processes.[21]

3.0 SUMMARY

Connecticut generally fulfills the requirements of the Act. Legislation is especially strong in bonding powers and in the authorities' ability to charge construction costs to industrial users.

3.1 Deficiencies

1. Re: "Authority to Accept and Utilize Grants." Sewer authorities should be expressly authorized to enter into federal grant requests.

2. Re: "Authority to Assure That Each Participating Community Pay Its Proportionate Share." Statutory assurance of equal treatment may be necessary although the fact that charges must be fair and reasonable should be adequate.

4.0 BIBLIOGRAPHY

1. Monograph, Dept. of Environ. Protection, Clean Water by 1974, June 9, 1971.

2. Comment, Water Pollution: Observations on Connecticut's Response, 3 Conn. L. Rev. 206(1970).

FOOTNOTES

1. Conn. Gen. Stat. Ann. §25-54c(d), -54e, -54g, -54h (Supp. 1972).
2. Conn. Gen. Stat. Ann. §§25-54c(g), c(h), c(i), (Supp. 1972)
3. Conn. Gen. Stat. Ann. §7-245 et seq.(1972).
4. Conn. Gen. Stat. Ann. §7-245(1972).
5. See, e.g., Conn. Gen. Stat. Ann. §§7-330 to -334(1972).
6. Conn. Gen. Stat. Ann. §7-247(1972).
7. Conn. Gen. Stat. Ann. §25-54y(Supp. 1972).
8. Conn. Gen. Stat. Ann. §7-255(1972).
9. Conn. Gen. Stat. Ann. §7-249(1972).
10. Id.
11. Conn. Gen. Stat. Ann. §7-259(1972).
12. Conn. Gen. Stat. Ann. §7-374(b)(1972).
13. Conn. Gen. Stat. Ann. §7-265(1972).
14. Conn. Gen. Stat. Ann. §7-259(1972).
15. Id.
16. Conn. Gen. Stat. Ann. §25-54(Supp. 1972).
17. Conn. Gen. Stat. Ann. §§7-272, -273(1972).

18. Conn. Gen. Stat. Ann. §2-528(1972).
19. See Paragraph 2.6.1, "Authority to Deny New or Additional 'Hook-Ups'" supra.
20. Conn. Gen. Stat. Ann. §7-245(1972).
21. Conn. Gen. Stat. Ann. §7-247(1972).

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MAINE REPORT

(1972)

1.0 OVERVIEW

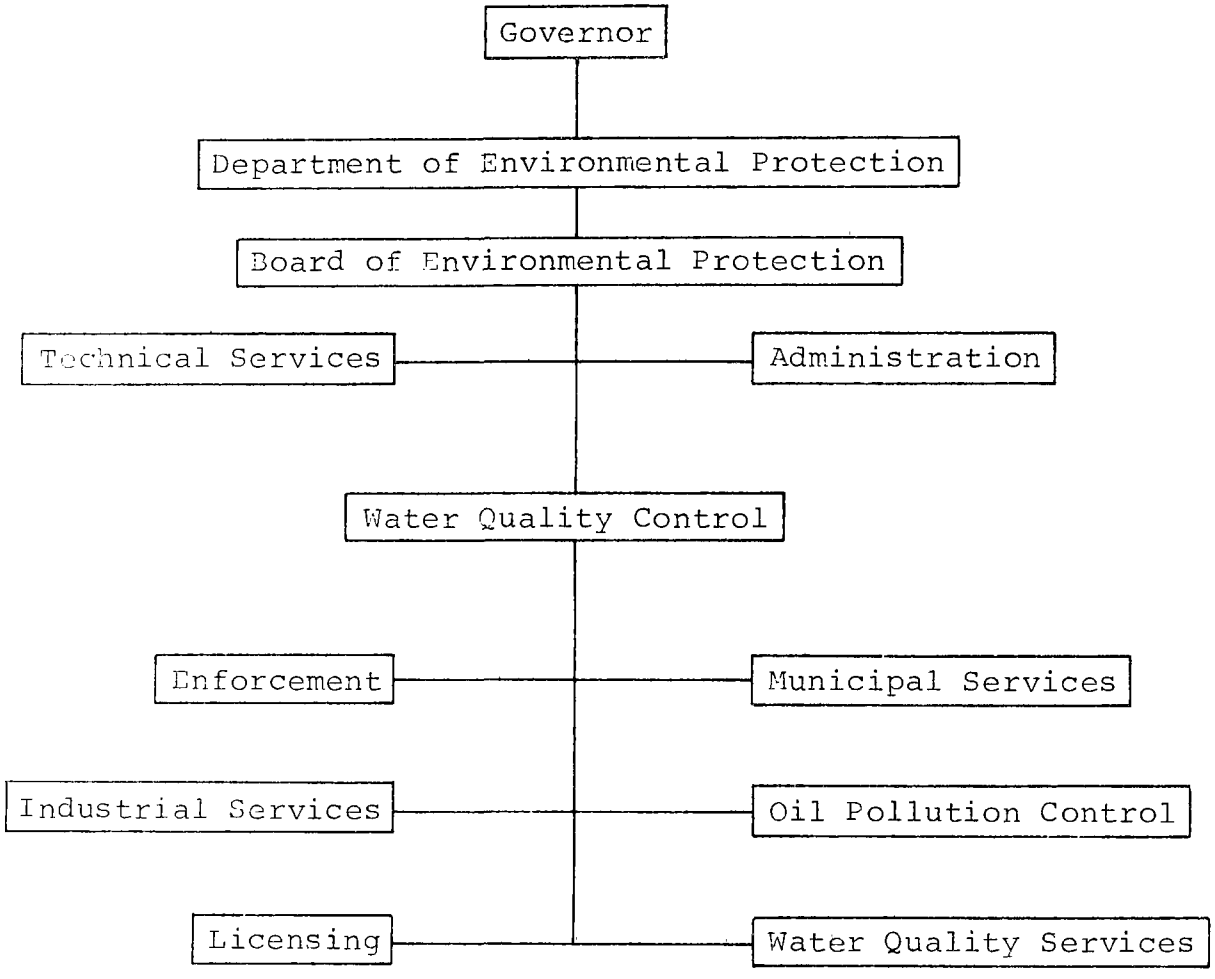
1.1 Description of Existing Agencies

Maine has a fairly sophisticated state and local wastewater control system. Aside from a possible need for some further statutory development, the state is quite well organized for controlling and improving water quality.

Maine's water pollution control agency was formed in 1967; and, with a few minor changes in powers, the agency was recently renamed the Board of Environmental Protection.[1] This board, operating within the Department of Environmental Protection, must approve any proposed construction of wastewater facilities and advises the various authorities on methods of wastewater control which should be employed.[2] Enforcement of state and federal water standards and statewide pollution planning functions are handled by the board. Moreover, the board recommends water pollution standards for the legislature's evaluation and approval.[3]

Currently, two sewage authorities may be publicly operated in Maine. Municipal sewer systems are statutorily authorized under the Revenue Producing Municipal Facilities Act.[4] Sanitary districts, the second type of authority, are formed after board approval of the district is accepted by a majority of the residents in the proposed district.[5]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Municipalities may operate, build and manage a sewer system which may operate within and without their corporate limits.[6] Sanitary districts are granted the same authority.[7]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Municipal sewer systems and sanitary districts may apply for and receive federal grants.[8]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Both municipal sewer systems and sanitary districts may impose rates and charges on users.[9] Also, fifty percent of the costs of common sewers in sanitary districts may be recovered by assessing those users affected.[10]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Municipal sewer systems are set up so that each category will pay its appropriate share since the rates may be based on the character of the premises or other factors affecting the use of the system.[11] Furthermore, the municipal officer may choose either to impose a surcharge upon those users whose waste places an unreasonable burden on the treatment system or else they may require pretreatment.[12] Sanitary districts also may insure that each category pays its appropriate share.

> [r]ates, to tolls, rents and entrance charges shall be uniform within such district...; but nothing shall preclude the district...from establishing a higher rate, toll, rent or entrance charge than the regular... [fees]...in sections where...the cost of service exceeds the average, but [these fees], shall be uniform....[13]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

No specific provisions exist on this matter.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

Both sanitary districts and municipalities with sewer systems may incur bonded indebtedness.

2.4.1 General Obligation Funding.

No specific provision exists on this matter. It is therefore assumed that general obligation bonds are unavailable for financing.

2.4.2 Special Funds and Revenue Funding.

Revenue bonds may be issued by both sanitary districts and sewer systems. Sanitary districts may issue bonds whenever the board of trustees establish approval by resolution and secure the permission of the issue from the Public Utilities Commission.[14] Municipal sewer system bonds are issued under different procedures. Cities' revenue bonds are issued when they have been approved by council resolution.[15] Towns, however, must secure the approval of the majority of at least twenty percent of the total number of voters who voted for the governor in the last election before they may issue their bonds.[16]

2.4.3 Other Methods of Financing.

The State will advance up to 30 percent of the expense for any pollution abatement construction program which has received federal approval.[17]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs [§208(c)(2)(G)].

Sewer systems have no specific provision on this matter. It is most likely that they would still be required to impose proportionate charges since intra-community charges may be based on the character of the effluent, as well as being reasonable, just and equitable. Sanitary districts, however, expressly provide for equal treatment.[18]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

No specific provision exists on this matter. Due to the severity of this sanction legislation should be required.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

Since a moratorium power does not exist statutorily it could be employed by using regulations refusing to service an area which does not comply with the plan. These regulations would be necessitated for facilities which would be unable to accept a given area's wastes without incurring non-complying discharges in violation of areawide standards.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

No other sanctions exist.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Industrial wastes may be accepted for treatment by both sanitary districts and sewer systems.[19] If wastes should impair the sewage system, the agencies are authorized to require pretreatment.[20]

3.0 SUMMARY

The Maine statutes provide one of the better systems of wastewater treatment in the United States. Regional problems may be handled by Board of Environmental Protection approved sanitary districts. While these probably should be established by the board's directive alone, the drawback of requiring local approval does not affect the state's ability to receive grants. Both local and regional sewage treatment are handled by municipal sewer systems. Both of these systems come quite close to meeting all of the Act's requirements.

3.1 Deficiencies

1. Re 2.3.2: Provision could be made for recovering industry's portion of the treatment works' construction costs.

2. Re 2.6, 2.6.1, 2.6.2: Presently no provisions exist for imposing sanctions on those municipalities served by sanitary districts. These should be provided in order to assure compliance with the present act.

4.0 BIBLIOGRAPHY

1. Delogu, Orlando E. A State Approach to Effluent Charge. 23 Maine L. Rev. 281 (1973).

FOOTNOTES

1. Me. Rev. Stat. Ann. tit. 38, §361 (Supp. 1972).
2. Id.
3. Id.
4. Me. Rev. Stat. tit. 30, §4251 (Supp. 1972).
5. Me. Rev. Stat. tit. 38, §1062(5)(Supp. 1972).
6. Me. Rev. Stat. tit. 30, §4251 (Supp. 1972).
7. Me. Rev. Stat. tit. 38, §1063 (Supp. 1972).
8. Me. Rev. Stat. tit. 30, §4251 (Supp. 1972); tit. 38, §1201 (Supp. 1972).
9. Me. Rev. Stat. tit. 30, §4253(1),(2)(Supp. 1972); tit. 38, §120,2 (Supp. 1972).
10. Me. Rev. Stat. tit. 38, §1203 (Supp. 1972).
11. Me. Rev. Stat. tit. 38, §4253(2)(Supp. 1972).
12. Id.
13. Me. Rev. Stat. tit. 38, §1202 (Supp. 1972).
14. Me. Rev. Stat. tit. 38, §1201 (Supp. 1972).
15. Me. Rev. Stat. tit. 30, §4252 (Supp. 1972).
16. Id.
17. Me. Rev. Stat. tit. 38, §411 (Supp. 1972).
18. See quote in 2.3.1 supra.
19. Me. Rev. Stat. tit. 30, §4253(2)(Supp. 1972); tit. 38, §1151 (Supp. 1972).
20. Id.

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

MASSACHUSETTS REPORT
(1972)

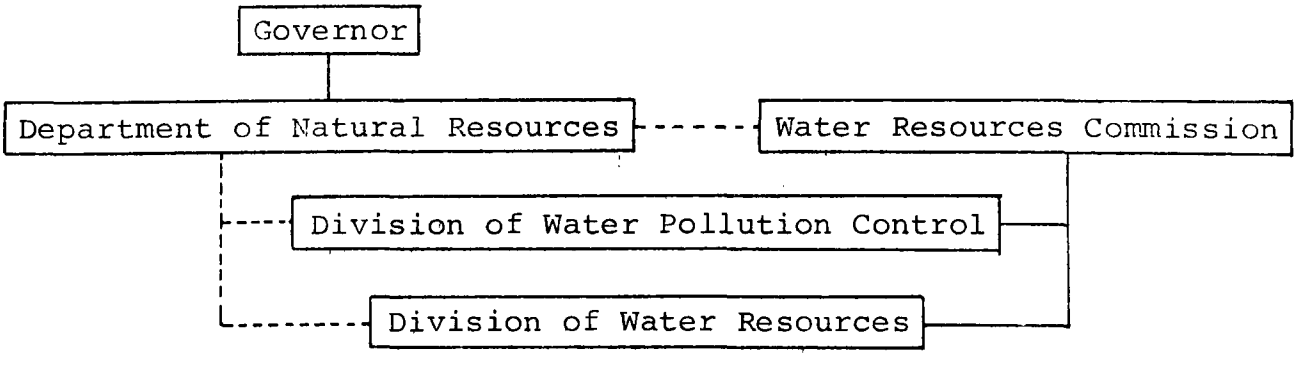
1.0 OVERVIEW

1.1 Description of Existing Agencies.

Massachusetts' top state agency for water resources is the Department of Natural Resources. While the Division of Water Pollution Control is part of this department, it is actually under the control of the Water Resources Commission.[1] The Commission, composed of representatives from seven departments and four public interest groups,[2] is presumably designed to provide maximum public and administrative input for the division's standard-setting, planning and enforcement duties.[3]

Waste water management is handled by three forms of agencies.[4] Sewage disposal systems are available to any city or town which falls outside of Boston's natural drainage area.[5] Those which fall within that area are specifically included in the independent metropolitan sewerage district.[6] Regional and local waste water management and planning may also be handled by water pollution abatement districts.[7] Local bodies may be pressured into forming these agencies by preconditioning the[8] receipt of state aid on their establishment. They are established upon the recommendation of the Division of Water Pollution Control and the approval of both the selectmen (city council, etc.) and the area's voters.[9]

1.2 Schematic Diagram of Existing Agencies.



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All agencies may design, construct, operate and maintain sewage works.[10]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All agencies may apply for and receive financial assistance from the state[11] and from the federal government.[12]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Sewage disposal systems are authorized to assess "just and equitable" annual charges.[13] They may also charge users a "reasonable amount" for obtaining a permanent privilege to use the facilities[14] or, they may charge those who pay no annual assessments a "reasonable amount" for the use of the facilities.[15] The town may also bear a percentage of the cost of the facilities should the board of aldermen so desire.[16]

No provision exists for charging individual users within the metropolitan sewerage district for the use of the district's facilities. Likewise, no such provision exists for water pollution abatement districts.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Since sewage disposal systems' assessments for annual or other charges must be equitable or reasonable presumably no such party could be overcharged or undercharged. Such assurance is not possible in metropolitan sewerage districts nor in water pollution abatement districts since there is no provision for charges made in either act. However, there is no reason why this obligation could not be provided by contract.

2.3.2 Full Recovery Will be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

No provision is available to carry out this mandate for any of the existing systems. Again, this could be arranged by contract. Moreover, the existence of industrial development facilities provisions in the state virtually assures that no problems would be encountered in collection under this method. (See comments in footnote 4.)

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All systems may finance their facilities by using some bonding method. Since both sewage disposal systems and member towns of the metropolitan sewerage district are always handled at the town level, their financing is covered under city and town financing laws. They are, therefore, discussed below as cities or towns.

2.4.1 General Obligation Funding.

Short-term funding may be used by any city or town for one year as long as such indebtedness is approved by majority vote and does not exceed the aggregate tax level of the previous year.[17]

Long-term, 30-year general obligation bonds may be issued to construct or maintain sewerage works if two percent of the available revenues are pledged to the proposed project.[18] Should the town's emergency finance board approve of the bond, no debt limit is imposed upon the town for the bond issue. If the project does not receive this approval, a city's indebtedness is limited to 2.5 percent of the assessed value of its taxable property averaged over the three previous years or five percent of a town's assessed value.[19]

Water pollution abatement district members may issue 30-year general obligation bonds for their portion of the facilities' construction costs; these are not subject to any debt limitations.[20]

2.4.2 Special Funds and Revenue Funding.

No statutory authorization exists for issuing bonds based upon the facilities' revenues.

2.4.3 Other Methods of Financing.

The State of Massachusetts will pay an amount which assures that the local unit does not pay over 40 percent of its construction costs.[21]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Since sewage disposal systems must impose equitable charges presumably such a system could not impose higher fees on a sister community. The metropolitan sewerage district must share construction and maintenance costs among the participating members.[22] One provision specifically requires that all charges to member communities must be equal.[23] Charges imposed by water pollution abatement districts must be reasonable and equitable.[24]

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Absent statutory authorization sewage treatment works should not be able to refuse a municipality's waste due to the extreme health hazards.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Such authority exists in the Division of Water Pollution Control[25] and could, presumably, be delegated to the local agency involved. There is no provision which would prevent such refusal.

Thus, a pollution treatment facility could be required to refuse wastes by having the division of water pollution control order facilities to

> operate such facility in such a manner as in [the division's] opinion necessary to insure adequate treatment prior to discharge to the waters . . .[26]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Towns operating sewage disposal systems may impose fines of up

to 20 dollars against anyone who discharges non-conforming wastes into their system.[27] Whether each paying customer could be so fined daily is in question. Certainly this is an inadequate fine against an entire subdivision or town. Presumably any division of water pollution control fine assessed upon the system[28] could be passed on to the offending member. There appears to be no other statutory authority which enables an agency to impose fines or other sanctions on non-complying communities.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Both sewage disposal systems and water pollution abatement districts may receive industrial wastes.[29] While no provision expressly states this, the metropolitan sewerage district must be able to accept industrial wastes since it may absorb systems from operating towns outside the district.[30]

Refusal to accept industrial wastes must again, be treated as a right stemming from the Division of Water Pollution Control as analyzed in 2.6 supra. It can also be reasonably implied from the fact that the treatment management agency must protect its treatment works.

3.0 SUMMARY

No particular shortcomings exist for Massachusetts' sewage disposal systems as long as the various presumptions prove to be accurate. The most troublesome deficiencies are mentioned below.

3.1 Deficiencies

1. Re: 2.3, 2.3.1, 2.5, Both the metropolitan sewage district and water pollution abatement districts should be provided with user charges provisions which would include assurances of equitable apportionment among users.

2. Re: 2.6.2, More meaningful sanctions for all agencies would prove beneficial.

4.0 BIBLIOGRAPHY

Chermak, L., The Law of Revenue Bonds, (1954).

Hatch,"Massachusetts and Michigan: Two States With an Answer," 6 Lincoln L. Rev. 119 (1972).

FOOTNOTES

1. Mass. Code Ann. ch. 21, §26 (1973).
2. Mass. Code Ann. ch. 21, §8 (1973). The Commission consists of the commissioners of agriculture, commerce and development, natural resources, public health, and public works, the metropolitan district commissioner and the director of the division of fisheries and game.
3. Mass. Code Ann. ch. 21, §27 (1973). The division is further empowered to order towns to construct more adequate sewage treatment facilities whenever they are needed. Mass. Code Ann. ch. 21, §§44-46 (1973). See also Director V. Uxbridge, 4 ERC 1030 (1972).
4. A fourth type of sewerage disposal system is specially provided for through the use of industrial development facilities. These facilities are industrial complexes which may be created by towns at their own expense. Funds expended are to be paid back through rental income from those industries using the facilities. See Mass. Code Ann. ch. 40D, §§ et seq. (1973). This act now provides for financing waste disposal systems for these complexes. Since these systems are "subject to applicable laws," it is presumed that they fall under those laws (other than financing) which are provided for the city and town systems discussed infra.
5. Mass Code Ann. ch. 83, §1 et seq. (1971).
6. The metropolitan sewerage district is further divided into southern and northern regions. See, e.g., Mass Code Ann. ch. 92, §60 (1967). The towns which fall within the district are Arlington, Belmont, Boston, Braintree, Brookline, Cambridges, Canton, Chelsea, Dedham, Everett, Framingham, the north sewer district of Hingham, Lexington, Molden, Medford, Melrose, Milton, Natick, Needham, Stoughton, Newton, Norwood, Quincy, Randolph, Reading, Revere, Somerville, Stoveham, Wakefield, Valpole, Waltham, Watertown, Wellesley, Westwood, Weymouth, Wilmington, Winchester, Winthrop and Woodburn. Mass. Code Ann. ch. 92, §1 (1967). Mass. Code Ann. ch. 92, §2 (1967), makes it mandatory for these towns to join the system.
7. Mass. Code Ann. ch. 21, §28 (1973).
8. See Mass. Code Ann. ch. 21, §30A (1973).
9. Mass. Code Ann. ch. 21, §28(b) (1973).
10. Mass. Code Ann. ch. 21, §30 (1973); ch. 83, §1 (1971); ch. 92, §1 (1967).
11. Mass. Code Ann. ch. 21, §§27, 30A (1973).

12. Mass. Code Ann. ch. 21, §33 (1973).
13. Mass. Code Ann. ch. 83, §16 (1971).
14. Mass. Code Ann. ch. 83, §17 (1971).
15. Mass. Code Ann. ch. 83, §20 (1971).
16. Mass. Code Ann. ch. 83, §23 (1971).
17. Mass. Code Ann. ch. 44, §4 (1973).
18. Mass. Code Ann. ch. 44, §7 (1973).
19. Mass. Code Ann. ch. 44, §10 (1973).
20. Mass. Code Ann. ch. 21, §35 (1973).
21. Mass. Code Ann. ch. 21, §33 (1973).
22. Mass. Code Ann. ch. 92, §§5B, 6 (1967).
23. Mass. Code Ann. ch. 92, §3 (1967).
24. Mass. Code Ann. ch. 21, §32 (1973).
25. Mass. Code Ann. ch. 83, §7 (1967) incorporated by Mass. Gen. Laws 1966, ch. 685, §3.
26. Mass. Code Ann. ch. 21, §45 (1973).
27. Mass. Code Ann. ch. 83, §10 (1971).
28. Mass. Code Ann. ch. 21, §42 (1973).
29. Mass. Code Ann. ch. 21, §30 (1973); ch. 83, §6 (1971).
30. Mass. Code Ann. ch. 92, §1 (1967).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

NEW HAMPSHIRE REPORT

(1972)

1.0 OVERVIEW

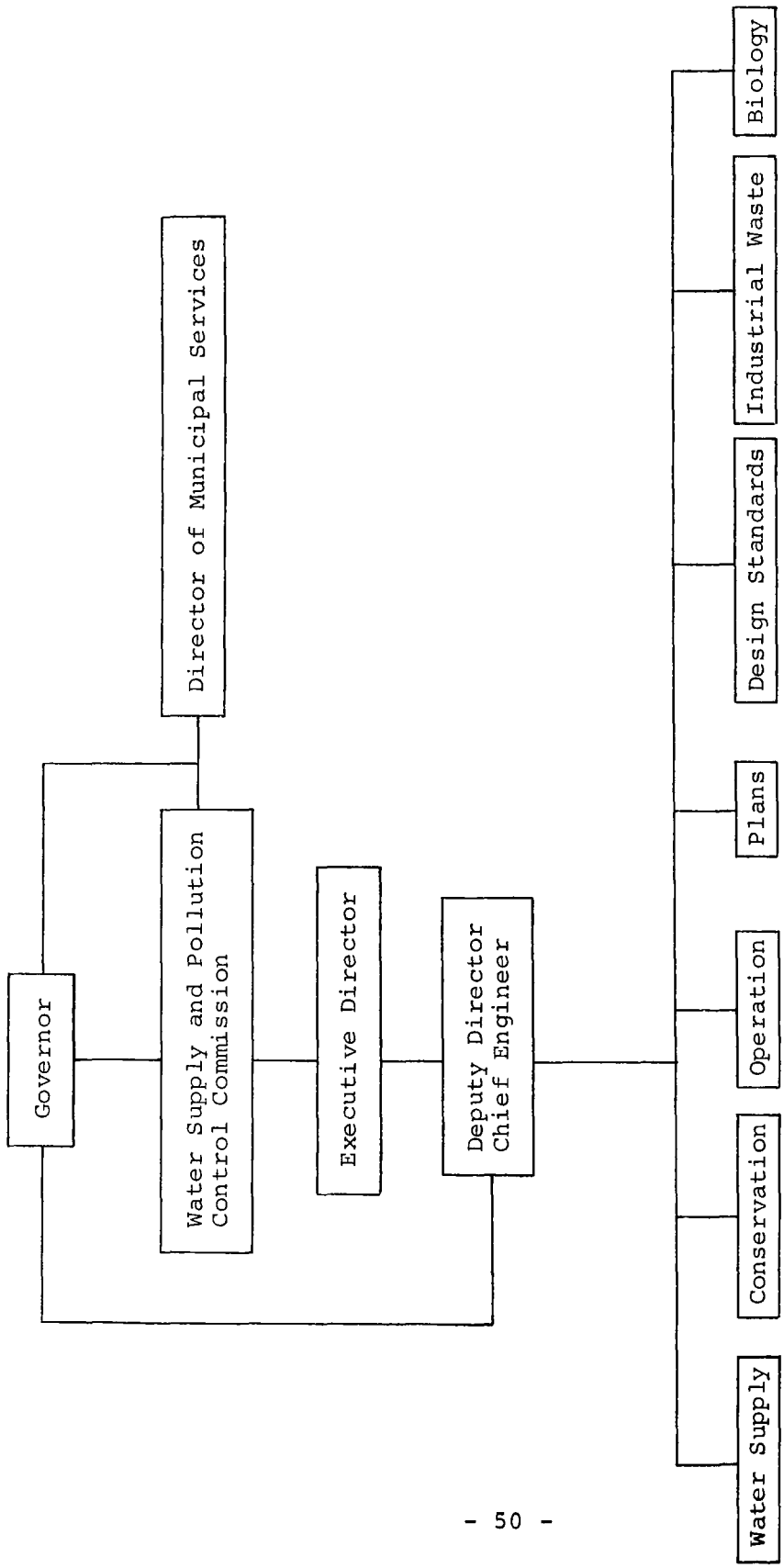
1.1 Description of Existing Agencies.

All state-wide matters relating to water pollution have been delegated to the New Hampshire Water Supply and Pollution Control Commission.[1] This Commission exercises standard setting powers and also carries out enforcement requirements.[2] The Commission also acts as a state planner and may require (if the circumstances indicate its necessity) construction of a sewage disposal facility.[3]

Present statutory coverage of waste water management is exceptionally limited. Municipalities (a term including counties, cities, towns, villages and districts) may create sewage systems known as disposal sewage facilities.[4] The governing body may order elections to establish a sewer commission.[5] Regional treatment plants may be ordered established by the state water supply and pollution control commission whenever it feels that such an approach will be beneficial to the area involved; there is, however, only one statute which deals with these regional facilities.[6]

In 1972 New Hampshire's legislature created a state-operated (through the Water Supply and Pollution Control Commission) river basin sewage system.[7] This legislation is unique; it provides that all existing sewage and waste disposal facilities in the Winnipesaukee River Basin are to be turned over to the state commission which is to plan, acquire, construct and operate these facilities for the benefit of those communities in the basin.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or By Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Municipalities may "construct and maintain sewage treatment plants and all main drains of common sewers."[8] The Winnipesaukee River Basin Control has similar legislation.[9]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Both the Commission and all municipalities may receive and utilize grants or funds from any source.[10]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Municipalities may impose equitable sewer rentals for all sewage treatment expenses.[11] Industrial users must be charged by some other method.[12] Expenses for maintaining and constructing the sewage treatment works also may be collected by imposing assessments on those benefited.[13]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

The rents charged must be determined on an "equitable basis." This would necessarily involve payment by each category of user of their appropriate share.[14]

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Since assessments for the construction of sewage treatment works may be collected from anyone benefited,[15] industrial users may be compelled to pay for their portion of construction costs.

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

Sewage systems may be financed for terms of up to 30 years.[16] Short-term indebtedness may be incurred in anticipation of federal or state aid.[17]

2.4.1 General Obligation Funding.

A city or town's full faith and credit may be pledged for sewer works. Under normal circumstances, general debt limitation of 1.75 percent of a town's or city's tax valuation exists for almost all debts.[18] Villages are limited to one percent.[19]

Sewage facility financing may escape the city or town debt limitations, however, under two conditions. First, the municipal corporation's activity is exempt from the debt limits whenever construction of these facilities has been ordered by the water supply and pollution control commission.[20] Secondly, should the project be certified by the governor land council as necessary, the municipal corporation again may escape the debt restrictions.[21]

Bonds issued by the municipalities vary in their methods of approval. City bonds must be approved by a resolution of two-thirds of all the members of each branch of the city councils.[22] Other municipal corporations must have approval of two-thirds of all voters present at an annual or special meeting.[23] Should a special meeting be called however, a majority of all legal voters must be present at that meeting and proper notice must be given.[24] These bonds are secured by the municipality's tax powers. They may also be guaranteed by the state's full faith and credit upon the governor's approval.[25]

2.4.2 Special Funds and Revenue Funding.

No revenue bonds are provided for either statutorily or under the constitution.

2.4.3 Other Methods of Financing.

No additional forms of financing exist, although the state shall contribute annually to municipalities up to 30 percent of the yearly amortization charges on the original costs of the facilities.[26]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

With respect to municipalities, no specific provision exists on this matter. However, since each consumer must pay a charge based upon some equitable consideration, the statute may be applied to communities by analogy.

In the case of the Winnipesaukee River Basin Commission, there is a specific provision for assessment of municipalities served, which assessment is based on cost of treatment.[27]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

No specific provision exists on this matter. Due to the severity of this sanction, legislation would be required if it is to be implemented.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

While the power to prevent actual construction is not provided any treatment agency by statute, any such agency should be able to refuse any waste treatment which would constitute an over burden on its treatment facility. On the other hand, the Commission through its discharge permit powers, may effectively enforce such a moratorium.[28]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

No other sanctions are provided.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Industrial wastes may be accepted for treatment[29] and pretreatment may be required as a condition to issuance of a permit by the Commission.[30]

3.0 SUMMARY

Except for a few minor areas, existing New Hampshire statutes are adequate for the purposes of the Act. While no statutes exist for the formulation of certain policies, it is reasonable that these provisions may be implied from broad statutes. However, it would be helpful to correct the deficiencies noted below.

3.1 Deficiencies

1. Re: 2.6.1 and 2.6.2. No sanction is presently available against communities having their wastes processed by another's plant, although it might be indirectly provided by the Commission through its permit and financial aid powers.

2. Re: 2.7 Clarification for requiring pretreatment of industrial wastes would be helpful, since the present law appears to apply to industry as a direct discharger into state waters as compared with discharging into a sewage treatment facility.

4.0 BIBLIOGRAPHY

None.

FOOTNOTES

1. N.H. Rev. Stat. Ann. ch. 149, § 1 et seq. (Supp. 1972).
2. N.H. Rev. Stat. Ann. ch. 149, §§ 4V(1964), 4IX(Supp. 1972).
3. N.H. Rev. Stat. Ann. ch. 148, § 23-a(Supp. 1972).
4. N.H. Rev. Stat. Ann. ch. 252, § 1 et seq.(1964); ch. 149-B, § 1 (Supp. 1972).
5. N.H. Rev. Stat. Ann. ch. 252, § 19(1964).
6. N.H. Rev. Stat. Ann. ch. 149-B, § 1-a(Supp. 1972).
7. N.H. Rev. Stat. Ann. ch. 149-G, § 1 et seq.(Supp. 1972).
8. N.H. Rev. Stat. Ann. ch. 252, § 4(1964).
9. N.H. Rev. Stat. Ann. ch. 149G, § 1(Supp. 1972).
10. N.H. Rev. Stat. Ann. ch. 33, § 7-b(1970); ch. 149, § 4 VI (Supp. 1972).
11. N.H. Rev. Stat. Ann. ch. 252, § 10(Supp. 1972).
12. Id. Presumably such charges would be made according to the specific burden which is placed upon the sewer system by the particular effluent.
13. N.H. Rev. Stat. Ann. ch. 252, § 9(1964).
14. N.H. Rev. Stat. Ann. ch. 252, § 10(Supp. 1972).
15. N.H. Rev. Stat. Ann. ch. 252, § 9(1964).

16. N.H. Rev. Stat. Ann. ch. 33, §2(1970).
17. N.H. Rev. Stat. Ann. ch. 33, §7-b(1970); ch. 376, §1 et seq.(1969).
18. N.H. Rev. Stat. Ann. ch. 33, §§4-a(a), -(c)(1970).
19. N.H. Rev. Stat. Ann. ch. 33, §4-a(e)(1970).
20. N.H. Rev. Stat. Ann. ch. 33, §5(1970).
21. N.H. Rev. Stat. Ann. ch. 33, §§5-b, -c(1970).
22. N.H. Rev. Stat. Ann. ch. 33, §9(1970).
23. N.H. Rev. Stat. Ann. ch. 33, §8(1970).
24. Id.
25. N.H. Rev. Stat. Ann. ch. 149, §5(Supp. 1972).
26. N.H. Rev. Stat. Ann. ch. 149-B, §1(Supp. 1972).
27. N.H. Rev. Stat. Ann. ch. 149-b, §6(Supp. 1972).
28. N.H. Rev. Stat. Ann. ch. 149, §§8 III and V(Supp. 1972).
29. N.H. Rev. Stat. Ann. ch. 149E, §2V(Supp. 1972); cf. N.H. Rev. Stat. Ann. ch. 252, §10(1964) "amended" 1971.
30. N.H. Rev. Stat. Ann. ch. 149, §8III(Supp. 1972).

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BEFORE READING THIS REPORT.

RHODE ISLAND REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

In Rhode Island, the Department of Health is the state water pollution control agency.[1] The Director of Health has the responsibility of administrating the anti-pollution laws, although much authority is delegated to the Assistant Director for Environmental Health.[2]

The Department of Health, through the Director, is granted express authority to develop comprehensive plans, set standards of water quality, adopt regulations, enforce its rules and regulations, and accept and administer grants and loans from any sources.[3] In addition, the Director controls the approval orders which are required for discharging sewage, for construction of disposal and treatment works, and for construction of industrial and commercial establishments which may result in the discharge of sewage.[4]

It is unlawful in Rhode Island for any person, firm, or private or public corporation to cause pollution of any waters, or to cause sewage to be placed in a location likely to cause pollution, or to place in any waters any solid wastes, junk, or debris of any kind.[5]

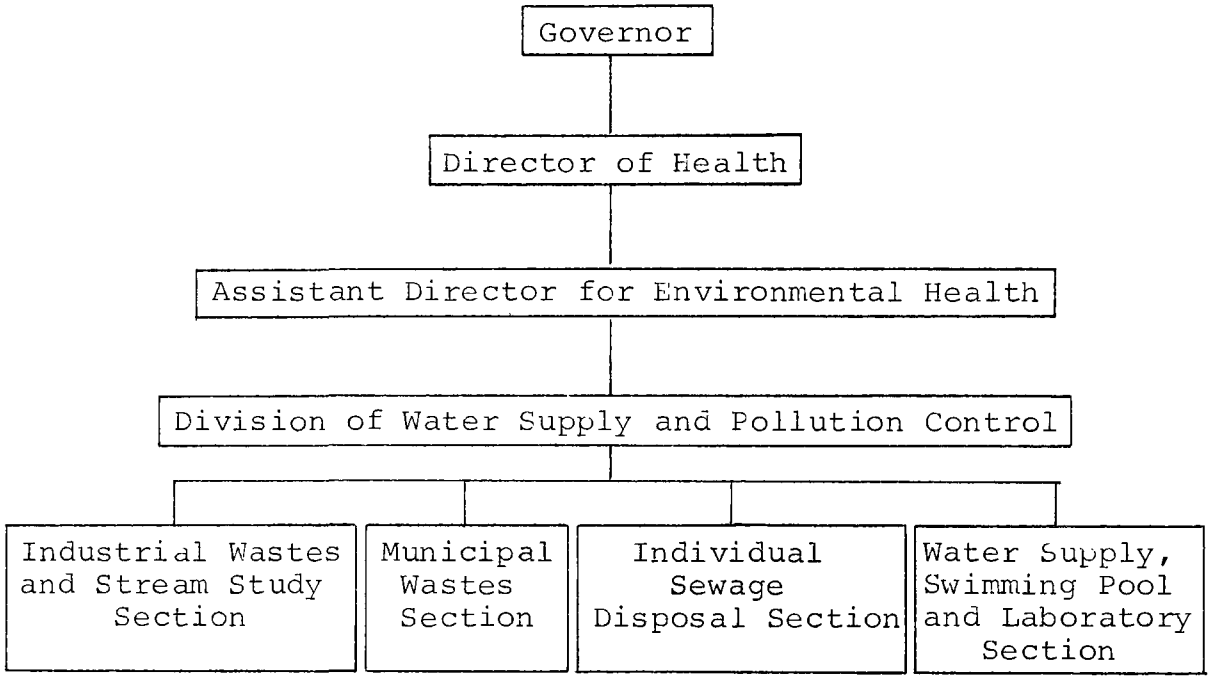
When the Director has cause to believe that any person is violating any regulations or orders of the Department he may investigate the matter.[6] The alleged violator is entitled to a hearing before a final order is issued.[7] If the Director finds that a violation did occur, he may issue an order directing the person to adopt some practicable and reasonably available system to prevent such pollution.[8]

The penalty for violating such a final order is a fine of up to $500, imprisonment up to thirty days, or both.[9] Prosecutions can be instituted by the Director or the Attorney General.[10]

The functions of actual operation and construction of waste treatment facilities are performed at the local level. Cities and towns are the primary units which operate waste disposal works,[11] although they lack specific statutory authority for this. (See discussion in paragraph 2.1 at footnote 18.) In addition, a special district, the Blackstone Valley Sewer

District, is authorized to oversee the sewage and waste disposal matters for an area encompassing five cities and towns.[12] It should be noted that local functions may vary greatly in Rhode Island because the state has a home rule provision in its constitution which allows municipalities to govern themselves.[13] No state statute proscribes exactly how local sewage and waste disposal in cities shall be accomplished.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

The Blackstone Valley District is expressly authorized to operate and construct sewage treatment plants and other facilities which may be required to combat water pollution.[14]

Statutory authority is also present to compel persons or municipalities to connect to the district system.[15]

No express statutory authority exists for local agencies such as cities, towns and counties to operate or construct sewage or wastewater treatment facilities. The state statutes mention the operation of such facilities several times, but never expressly delegate the power to operate them. For example, cities and towns have express authority to charge users of their sewer systems a reasonable amount. This power is granted "in addition to such powers, privleges, prerogatives and authority as are now granted to each city and town in connection with the sewers or sewer systems thereof."[16] However, no additional powers are listed in the state statutes. The only other mention of local sewer systems is in a section of the title concerning the Department of Health's power to grant funds to "any municipality, inter-municipal agency, municipal sewer district, or state district or agency for the construction of necessary facilities to prevent the discharge of untreated or inadequately treated sewage into the waters of the state."[17]

Other sources of authority for towns and cities to operate and construct sewer systems are the powers of town councils and city councils to make all ordinances and regulations necessary for the well-ordered management of their respective governmental units, as well as the authority for towns and cities to exercise all powers and privleges conferred on them by their charters or acts of the general assembly.[18]

The necessary powers can reasonably be implied from the preceding sections. Two other possibilities exist also. A pair of statutes authorizes cities and towns to provide for safe and sanitary disposal of all refuse,[19] and for disposal of wastes.[20] These provisions seem to be designed to cover solid wastes, however, since they mention hauling refuse and disposing of wastes by incineration.[21]

2.2 Authority to Accept and Utilize Grants, or Other Funds From any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

The Blackstone Valley Sewer District has the express power to accept and use any federal funds or federal assistance for projects.[22] Such projects must be carried out according to the federal rules and regulations made pursuant thereto.[23]

Express authority also exists for the Department of Health to accept loans and grants from the federal government or other sources.[24]

Cities and towns do not have any express authority in this area.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All agencies which operate wastewater treatment facilities have the power to assess treatment charges.[25]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Although there is no express power to charge proportionate rates based on the characteristics of the effluent, this power is not prohibited and may be implied from the power of the Blackstone Valley Sewer District to charge each municipality or individual user "reasonable charges."[26]

Cities and towns also have the authority to assess charges in such amount as bears a reasonable relation to the cost of the service rendered to the users.[27]

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the agencies has the authority to recover the capital construction costs from industrial users of the systems. The Blackstone Valley Sewer District has the express power to contract with the federal government, however, and such a contract could reasonably include a provision to meet the requirements of the acts.[28]

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208 (c)(2)(F)].

The Blackstone Valley Sewer District's power to incur short-term indebtedness can be implied from its ability to contract for construction of projects[29] and to enter into agreements with the federal government.[30]

Cities and towns have express authority to incur long-term indebtedness and thus could reasonably incur short-term debts as well.[31]

2.4.1 General Obligation Funding.

No express authority is present for the Blackstone Valley Sewer District to issue general obligation bonds. Cities and towns, however, do generally have the power to borrow up to 3% of the value of the taxable property without any special statutory permission.[32] City charters are authorized to provide the procedure for issuance of bonds after such bonds are approved by a general or special law.[33] There is no statutory limit on the amount of interest these bonds may bear.[34]

Cities and towns have express authority to issue bonds for financing projects to control water pollution, provided that the projects are approved by the Department of Health.[35]

2.4.2 Special Funds and Revenue Funding.

Neither cities nor the Blackstone Valley Sewer District has the express authority to issue revenue bonds for construction of wastewater treatment facilities.

2.4.3 Other Methods of Financing.

Cities and towns are authorized to borrow funds in anticipation of taxes[36] as well as issue bond anticipation notes.[37]

In addition, the Department of Health has the power to make state grants to any district or agency for the construction of wastewater treatment plants.[38]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

There is no express statutory authority for the Blackstone Valley Sewer District to charge proportionate rates to the various member communities. This power could be reasonably implied, however, from the ability to assess each municipality "reasonable" charges.[39]

Furthermore, cities and towns in Rhode Island can form interlocal cooperation commissions for the joint operation of

mutually advantageous projects.[40] If wastewater treatment facilities could be included as an eligible project for such cooperation, the agreement between the various communities could provide for proportionate rates and charges.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of the local agencies has the authority to refuse to receive wastes from persons or municipalities not in compliance with an overall plan.

The Department of Health could order a municipality to discontinue the discharge of wastes into the system by means of its control over the permits needed for operations.[41] That is, such a permit could be revoked by the Department of Health.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Although the Blackstone Valley Sewer District does not have express powers to deny new hook-ups, it does have the authority to compel municipalities to connect to the system.[42] The power to deny new hook-ups might be implied from the authority to compel such hook-ups.

Cities and towns lack any express powers to deny hook-ups. The Department of Health could deny hook-ups by disallowing additional permits.[43]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

No express authority exists for any of the local agencies to assess penalties, surcharges or other sanctions against violators.

The Department of Health can enforce its rules, regulations and orders by a $500 fine, thirty days imprisonment, or both.[44]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

The Blackstone Valley Sewer District has implied authority to

accept industrial wastes since the term "sewage" is defined as including chemicals, acid, dye-stuff, coloring matter, oil, tar and any compound or product thereof.[45] The district has express authority to require pretreatment of industrial wastes prior to entry into the facilities of the project.[46]

Individual cities and towns do not have any express powers to either accept industrial wastes or require pretreatment of them.

3.0 SUMMARY

Local agencies in Rhode Island do not have express authority to comply with many provisions of the Act necessary for future areawide management. Much of the problem is due to the lack of enumerated powers regarding sewage disposal and treatment for cities and towns. Legislation granting municipalities specific authority to operate and construct facilities as well as utilize grants and revenue bonds for these purposes would be helpful.

The Blackstone Valley Sewer District has statutory authority to meet most of the requirements for areawide plans. A lack of financing ability through bonds is the major deficiency here.

Such functions as state-wide planning, standard setting and permitting are delegated to the Department of Health, which generally has authority over pollution control in the state.

3.1 Deficiencies

There is a lack of express statutory authority for cities and towns or other local units to comply with all of the required provisions except those for assessing charges and issuing general obligation bonds. The Blackstone Valley Sewer District meets many more of the requirements than cities and towns do, but still lacks authority to issue bonds and to refuse wastes fron non-complying communities. New legislation curing the defects in the authority of the Blackstone Valley Sewer District and giving similar powers to municipalities would bring Rhode Island into full compliance.

4.0 BIBLIOGRAPHY

None.

FOOTNOTES

1. R.I. Gen. Laws Ann. §46-12-2 (1970 Reenactment).
2. Id.
3. R.I. Gen. Laws Ann. §46-12-3 (1970 Reenactment).
4. R.I. Gen. Laws Ann. §46-12-4 (1970 Reenactment).
5. Id.
6. R.I. Gen. Laws Ann. §46-12-5 (1970 Reenactment).
7. Id.
8. R.I. Gen. Laws Ann. §46-12-8 (1970 Reenactment).
9. R.I. Gen. Laws Ann. §46-12-14 (1970 Reenactment).
10. R.I. Gen. Laws Ann. §46-12-17 (1970 Reenactment).
11. See R.I. Gen. Laws Ann. §45-14-1 (1970 Reenactment).
12. R.I. Gen. Laws Ann. §46-21-1 et seq. (1970 Reenactment).
13. Constitution of R.I., Art. 28.
14. R.I. Gen. Laws Ann. §§46-21-6, 46-21-7, 46-21-20 (1970 Reenactment).
15. R.I. Gen. Laws Ann. §46-21-18 (1970 Reenactment).
16. R.I. Gen. Laws Ann. §45-14-1 (1970 Reenactment).
17. R.I. Gen. Laws Ann. §46-12-33 (1970 Reenactment).
18. R.I. Gen. Laws Ann. §§45-6-1 (1970 Reenactment), 45-2-1 (1970 Reenactment).
19. R.I. Gen. Laws Ann. §23-46-1 (1968 Reenactment).
20. R.I. Gen. Laws Ann. §45-34-2 (1970 Reenactment).
21. See notes 19 and 20.
22. R.I. Gen. Laws Ann. §46-21-16 (1970 Reenactment).
23. Id.
24. R.I. Gen. Laws Ann. §46-12-3 (1970 Reenactment).
25. R.I. Gen. Laws Ann. §§46-21-21, 46-21-22, 46-21-23, 45-14-1 (1970 Reenactment).
26. R.I. Gen. Laws Ann. §§46-21-21, 46-21-23 (1970 Reenactment).
27. R.I. Gen. Laws Ann. §45-14-1 (1970 Reenactment).
28. R.I. Gen. Laws Ann. §46-21-14 (1970 Reenactment).
29. R.I. Gen. Laws Ann. §46-12-7 (1970 Reenactment).
30. R.I. Gen. Laws Ann. §46-21-14 (1970 Reenactment).
31. R.I. Gen. Laws Ann. §45-12-1 et seq. (1970 Reenactment).
32. R.I. Gen. Laws Ann. §45-12-2 (1970 Reenactment).
33. R.I. Gen. Laws Ann. §45-12-19 (1970 Reenactment).
34. R.I. Gen. Laws Ann. §45-12-16 (Cum. Supp. 1972).
35. R.I. Gen. Laws Ann. §46-12-32 (1970 Reenactment).
36. R.I. Gen. Laws Ann. §45-12-4 (1970 Reenactment).
37. R.I. Gen. Laws Ann. §45-12-18 (Cum. Supp. 1972).
38. R.I. Gen. Laws Ann. §46-12-33 (1970 Reenactment).
39. R.I. Gen. Laws Ann. §46-21-21 (1970 Reenactment).
40. R.I. Gen. Laws Ann. §45-40-1 (1970 Reenactment).
41. See R.I. Gen. Laws Ann. §§46-12-3, 46-12-4 (1970 Reenactment).
42. R.I. Gen. Laws Ann. §46-12-18 (1970 Reenactment).

43. R.I. Gen. Laws Ann. §§46-12-3, 46-12-4 (1970 Reenactment).
44. R.I. Gen. Laws Ann. §46-12-14 (1970 Reenactment).
45. R.I. GEn. Laws Ann. §§46-21-3, 46-12-1 (1970 Reenactment).
46. R.I. Gen. Laws Ann. §46-21-26 (1970 Reenactment).

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BEFORE READING THIS REPORT.

VERMONT REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

The Agency of Environmental Conservation is the central state body charged with supervising the management of all waters in Vermont. Water management in the state is geared under this authority to the water classifications assigned by the Water Resources Board to all waters in the state.[1] In meeting these classifications the Agency's Secretary administers a comprehensive permit program designed to regulate all discharges into state waters.[2] Those who do not have a permit are prohibited from discharging any waste into state waters[3] and, under certain circumstances,[4] into publicly owned treatment works. In connection with this program the planning and standard setting functions of the Agency are tied directly by statute into the related requirements of the Federal Water Pollution Control Act Amendments of 1972.[5]

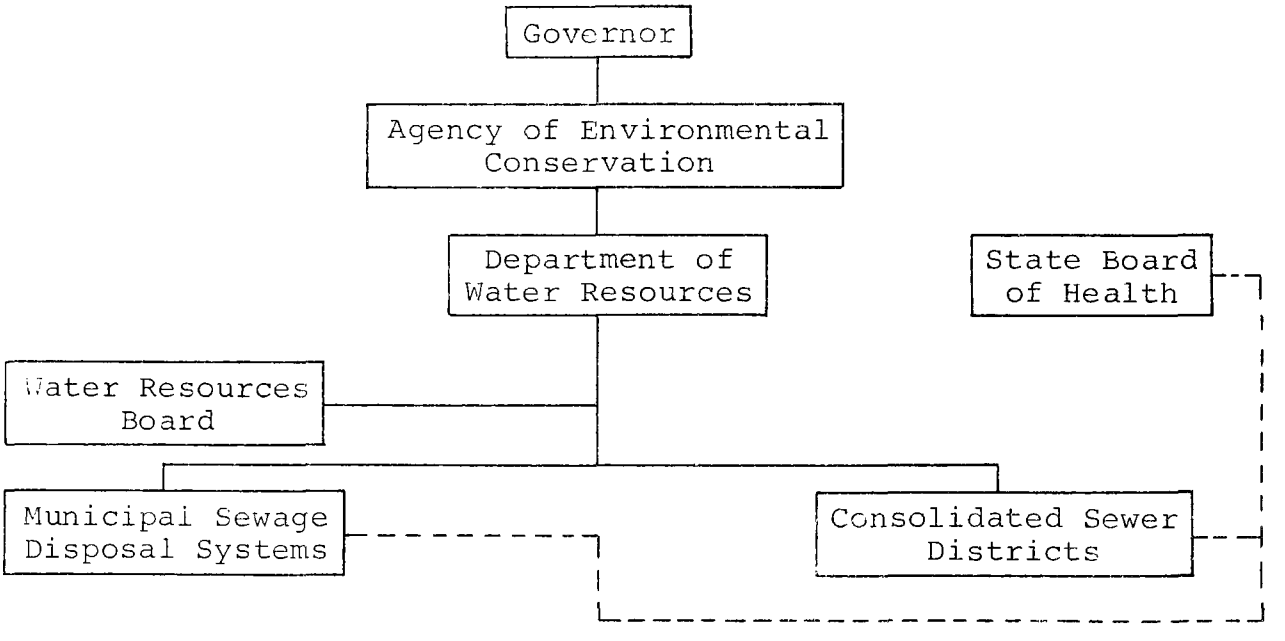
In discharging these responsibilities the Secretary has broad enforcement powers through the prosecution of suits against those who have violated any provision of a discharge permit or who have otherwise violated applicable state water pollution control legislation.[6] Noncompliance with a discharge permit may also be grounds for revocation of the permit,[7] and, in response to the discharge of any waste in violation of state law, the Secretary may issue "an order establishing reasonable and proper methods and procedures" for the control or elimination of such discharges.[8] Notwithstanding the exercise of the above authority, the Secretary has the emergency power to order an immediate stop to the discharge of any waste that is causing an "imminent and substantial" danger to the health and welfare of the affected populace.[9]

Penal sanctions are also imposed for a violation of any provision of the state water pollution control legislation[10] and for the failure to obey the terms of any order or permit issued under that legislation. The penalty for each violation is a maximum fine of $25,000 or imprisonment for not more than six months, or both.[11] For knowingly making any of a variety of false statements or representations to the Secretary the penalty

is a fine of not more than $10,000 or imprisonment for not more than six months, or both.[12]

On the local level the Water Resources Board is the designated agency to assist municipalities in the development of facilities for the storage, distribution and treatment of potable water supplies. The plans for those facilities must also have the approval of the State Board of Health.[13] Municipalities are then authorized to establish sewage disposal departments under the supervision of a locally selected board of sewage disposal commissioners.[14] In operating the sewage disposal system, municipal corporations have broad powers to establish ordinances and regulations and "to impose penalties for their breach and provide for their enforcement."[15] These municipal corporations are then authorized to combine in groups of two or more to from Consolidated Sewer Districts,[16] to elect their own board of sewer commissioners,[17] and to establish the rates for services rendered by the district.[18]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Municipal corporations have direct authority to "construct, maintain, operate, and repair" sewage disposal systems.[19] Municipalities also have authority to dispose of sewage for other towns, cities, villages, corporations or individuals by contracting "with the state, the federal government of any appropriate agency thereof."[20] Consolidated sewer districts are authorized to develop, acquire or improve sewage systems for the purpose of disposing of the sewage from the district.[21] Although the availability of service is thus limited to the district, neighboring towns may be admitted upon a decision by the district board of sewer commissioners that the boundaries of the district should be changed and by a majority vote of a meeting of the district voters approving such addition.[22]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes [§208(c)(2)(D)].

Municipalities are authorized to accept and utilize for water pollution abatement projects state assistance grants.[23] A more general authority to accept and utilize funds from any source may be implied from the broad contracting authority granted to municipalities.[24] The consolidated sewer districts have the authority to enter into agreements with state or federal governments in order to obtain grants or loans for the purpose of financing any project for which the district has authority to implement.[25]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Municipalities do not have specific authority to charge for sewage services on the basis of the volume, nature or delivery flow rate of the effluents; however, such authority may reasonably be inferred from the municipal authority to establish

charges on any equitable basis.[26] Municipalities have the further authority to levy and collect taxes on the ratable estate of the municipal corporation as is necessary for the payment of sewage disposal expenses and indebtedness.[27]

Consolidated sewer districts have the same assessment authority as municipalities,[28] and the member towns have the additional taxing authority to raise revenue sufficient to meet their respective share of the district expenses.[29]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

The charges imposed on the users of both systems may well take into account the proportionate share of costs assignable to differing usage categories. This authority, under both systems, is implied from one of five charge methods which allows the commissioners to charge "on any other equitable basis."[30]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There are no specific provisions authorizing municipalities to recover the capital costs of their sewage systems although such authority may be inferred from the equitable basis method of charging for sewage services.[31] The authority to recover the federally funded portion of the construction costs may also be inferred as incidental to the municipal contracting authority with the federal government for sewage disposal.[32]

Consolidated sewer districts are required to establish their rates so as to recover the cost of the sewer system for which an indebtedness was assessed by the district.[33] Since the EPA grants represent an indebtedness for the industrial portion of the construction costs so funded, this requirement can be met by the districts.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Municipalities may for the purposes of adequately disposing of sewage within its boundaries, establishing and operating

a sewage plant and making necessary improvements, issue evidences of indebtedness or negotiable bonds.[34] Consolidated sewer districts may also issue bonds "for the purpose of paying the cost of a sewer system and improvements thereto."[35] These long-term debt capacities of both systems are supplemented by the short-term debt capacity implicit in the municipal and district contract authorizations.[36]

2.4.1 General Obligation Funding.

The normal debt ceiling imposed on municipal obligations[37] is not applicable to the general obligation funding for sewage disposal systems.[38] Upon approval by a majority of those voting, negotiable bonds or other forms of indebtedness may be issued for a period of up to thirty years from the date of issue.[39] The districts are also free of the customary debt limits and may, upon a majority vote at a district meeting, issue general obligation debt for a period of up to thirty years from the date if issue.[40] The shares of such district indebtedness shall be apportioned respectively among the member towns, and the liability thereon of the members and the district is joint and several.[41]

2.4.2 Special Funds and Revenue Funding.

Municipal corporations are not given the authority within the statutes dealing with sewage disposal systems to engage in revenue funding. However, a municipal corporation is authorized to engage in revenue funding for the construction, operation or management of any public utility.[42] This authority relates to sewage systems only by implication, since the term "public utility" is not defined and there appear to be no cases construing its meaning.

Consolidated sewer districts are given direct authority to issue revenue bonds with the one condition being that no such bonds may issue while the district is liable on any outstanding bonds or other evidences of indebtedness, however the district may issue general obligation bonds for the refunding of any evidences of district indebtedness.[43]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

After the approval of a district's annual budget, the board

of sewer commissioners computes the share of each member town and gives notice to the legislative branch of each member town the amount of its respective contribution.[44] Expenses incurred in excess of proceeds from indebtedness and service charges are then divided among the member towns according to a formula adopted at an annual or special meeting of those towns. In the absence of an agreed on formula, two-thirds of such expense is to "be divided in the proportion which the total sewage . . . flow to the inhabitants of each member town of the district bears to the total sewage flow in all the member towns in the last preceding full calendar year of operation" and the balance is to be divided among the member towns in the proportion which the population of each member town according to the last rental census bears to the total population of the district."[45] This procedure provides adequate authority to meet this requirement and is supplemented by the district's authority to establish charges to users on any equitable basis.[46]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Neither municipalities nor districts have statutory authority to "cut-off" existing municipalities being served. However, the Secretary of the Environmental Conservation Agency does have this power through its authority to revoke discharge permits.[47] The circumstances justifying a "cut-off" include the violation by the holder of "any requirement, restriction or condition" of the discharge permits, and the Secretary may include such conditions as are necessary to carry out the purposes of applicable state and federal law.[48]

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Both municipalities and districts are without the prescribed statutory authority to deny new or additional hook-ups for prospective noncompliance with <u>any</u> provision of an areawide plan. However, the Secretary may have such authority in his power to grant or deny applications for discharge permits. The relevant inquiry in the consideration of a permit application is only the effect of the proposed discharge on water quality and on applicable state and federal law.[49] The inquiry is not geared to the possible noncompliance of the surrounding municipality with an areawide plan; and, although

the Secretary must issue a permit if the proposed discharge is within the statutory requirements, the Secretary may include such conditions as are necessary to carry out the purposes of applicable state and federal law.[50] Consequently, the Secretary might well include in the permit a condition precedent delaying the operational effect of the permit until the municipality involved complies with the provisions of the areawide plan.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

The municipal and district agencies are without authority to assess charges or impose penalties on anyone for such noncompliance. However, municipal corporations do have the power to enact ordinances "relating to the matters contained in this chapter [Ch. 79. Sewage Disposal System], consistent with law, and to impose penalties for the breach thereof."[51] If a municipal corporation in conjunction with its treatment of discharges from areas outside of its political boundaries (see paragraph 2.1) were to adopt the provisions of its areawide plan, it could then impose such charges and penalties for breach thereof as it felt necessary.

The Secretary through his power to include conditions in the discharge permits,[52] may seek a wide variety of remedies by bringing suit in equity for the violation of those conditions.[53] These include inter-alia an injunction against future discharges the assessment of punitive damages and levy civil penalties of up to $10,000 a day for each day of violation.[54]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Municipal sewage disposal plants are explicitly authorized to receive and accept industrial wastes.[55] The authority of district agencies to receive industrial wastes may reasonably be implied from their general authority to receive sewage.[56]

3.0 SUMMARY

The Vermont statutes appear, directly and/or by implication, to provide their waste treatment agencies with sufficient authority to qualify under this study for federal grants for construction.

3.1 Deficiencies

The authority under paragraphs 2.6 to 2.6.2, although sufficient in scope, is not lodged with the respective waste treatment agencies. Instead, such authority is placed with the Agency of Environmental Conservation. Therefore, only to the extent this authority is exercised in conjunction with the regional waste treatment agencies will this portion of the study meet federal requirements.

4.0 BIBLIOGRAPHY

1. Heins, Constitutional Restrictions Against State Debt, (1963).

2. Moros, Nicholas P., Effluent Fees in Water Quality Management: The Vermont Water Pollution Control Act, Environmental Affiars, p. 631 (1971).

3. Note, Water Pollution Control in Vermont: A System of Effluent Charges, 4 Vt. Law Reform 135(1970).

FOOTNOTES

1. 10 V.S.A. §908(a) (Unofficial 4/6/73).
2. 10 V.S.A. §908(b) (Unofficial 4/6/73).
3. 10 V.S.A. §909 (Unofficial 4/6/73).
4. Id. Discharge into publicly owned treatment works is prohibited when the waste "interferes with, passes through without treatment, or is otherwise incompatible with such works or would have a substantial adverse effect on such works or on water quality."
5. 10 V.S.A. §908(b) (Unofficial 4/6/73).
6. 10 V.S.A. §917a (Unofficial 4/6/73).
7. 10 V.S.A. §913a (Unofficial 4/6/73).
8. 10 V.S.A. §916a (Unofficial 4/6/73).
9. 10 V.S.A. §923 (Unofficial 4/6/73).
10. 10 V.S.A. Ch. 33 (Supp. 1972).
11. 10 V.S.A. §918(a) (Unofficial 4/6/73).
12. 10 V.S.A. §918(b) (Unofficial 4/6/73).
13. 10 V.S.A. §578 (Supp. 1972).
14. 24 V.S.A. §3611 (Supp. 1972).
15. 24 V.S.A. §3612 (Supp. 1972).
16. 24 V.S.A. §3671 (Supp. 1972).
17. 24 V.S.A. §3674(a) (Supp. 1972).
18. 24 V.S.A. §3679 (Supp. 1972).
19. 24 V.S.A. §3602 (1967).

20. 24 V.S.A. §3606 (1967).
21. 24 V.S.A. §3671 (Supp. 1972).
22. 24 V.S.A. §3685 (Supp. 1972).
23. 10 V.S.A. §1235 (a) (Supp. 1972).
24. 24 V.S.A. §3606 (1967) (see paragraph 2.1 in report).
25. 24 V.S.A. §3673(b) (Supp. 1972).
26. 24 V.S.A. §3610(5) (Supp. 1972).
27. 24 V.S.A. §3608 (Supp. 1972).
28. 24 V.S.A. §3679 (Supp. 1972).
29. 24 V.S.A. §3680 (Supp. 1972).
30. 24 V.S.A. §3610(5) (Supp. 1972).
31. Id.
32. 24 V.S.A. §3606 (1967);(see paragraph 2.1 in report).
33. 24 V.S.A. §3679(3) (Supp. 1972).
34. 24 V.S.A. §3608 (Supp. 1972).
35. 24 V.S.A. §3685(a) (Supp. 1972).
36. 24 V.S.A. §§3606 (1967) and 3673(b) (Supp. 1972).
37. 24 V.S.A. §1759(a) (1967).
38. 24 V.S.A. §3608(1) (Supp. 1972).
39. 24 V.S.A. §3608(2) (Supp. 1972).
40. 24 V.S.A. §3684(a) (Supp. 1972).
41. Id.
42. 24 V.S.A. §1822 (1967).
43. 24 V.S.A. §3684 (Supp. 1962).
44. 24 V.S.A. §3680(a) (Supp. 1972).
45. 24 V.S.A. §3680(b) (Supp. 1972).
46. 24 V.S.A. §3679 (Supp. 1972).
47. 10 V.S.A. §913a (Unofficial 4/6/73).
48. 10 V.S.A. §911a(c) (Unofficial 4/6/73).
49. Id.
50. Id.
51. 24 V.S.A. §3612 (1967) (Unofficial 4/6/73).
52. 10 V.S.A. §911a(c) (Unofficial 4/6/73).
53. 10 V.S.A. §917a (Unofficial 4/6/73).
54. 10 V.S.A. §917a(1), (5) and (6) (Unofficial 4/6/73).
55. 24 V.S.A. §3601 (1967).
56. 24 V.S.A. §3671 (Supp. 1972).

REGION II

PLEASE REFER TO FORMAT
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NEW JERSEY REPORT
(1972)

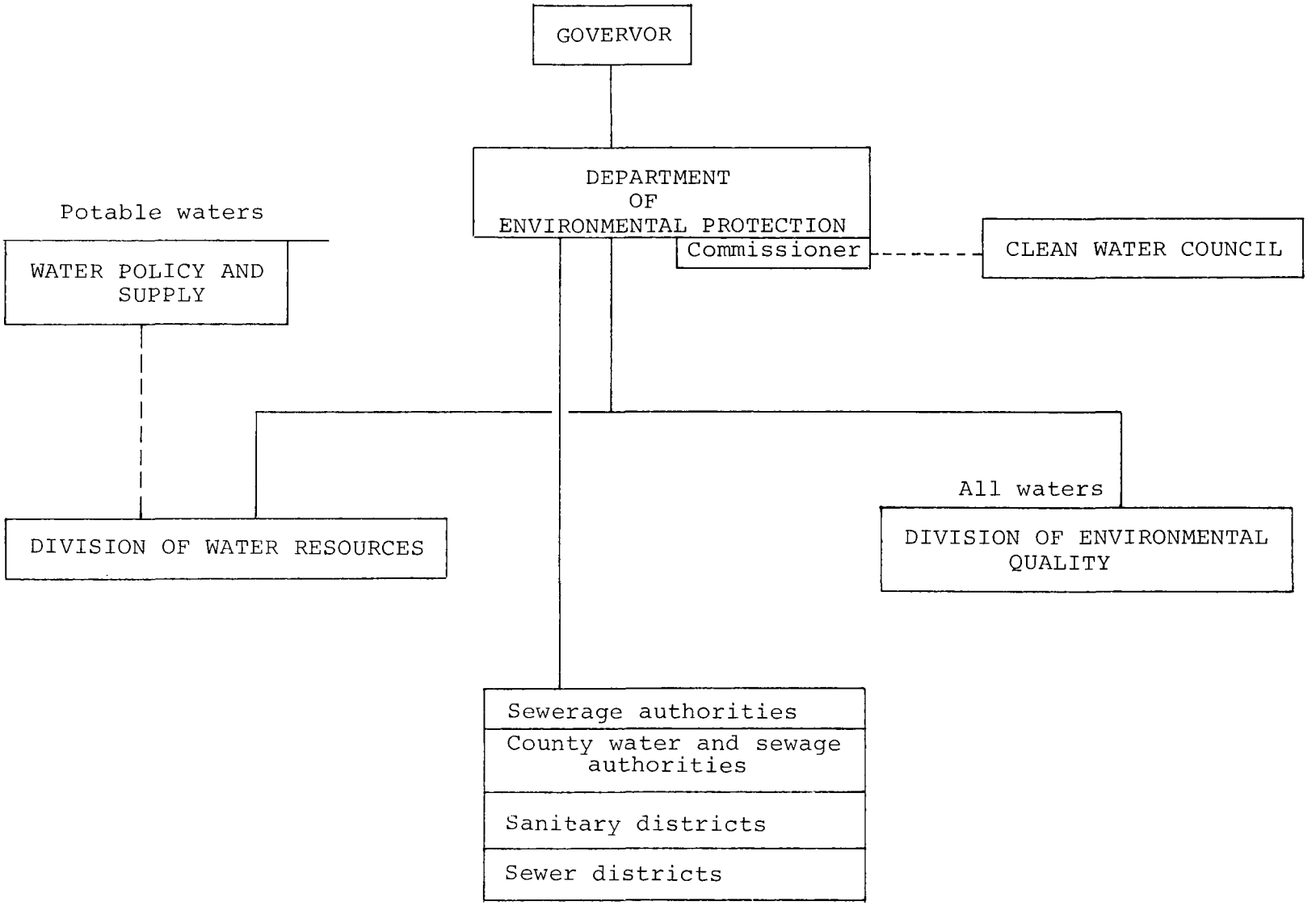
1.0 OVERVIEW

1.1 Description of Existing Agencies.

New Jersey recently consolidated its pollution control functions under the Department of Environmental Protection.[1] This department sets and enforces pollution standards through the Division of Environmental Quality.[2] The Department also issues permits before any construction, improvement, alteration or operation of a waste treatment work is allowed.[3]

A variety of sewerage management agencies exist in New Jersey. Sewerage authorities may be created by municipalities, counties and any geographically larger regions.[4] County (or municipal) water and sewage disposal authorities (municipal or county utilities authorities) may be used to manage both water supply and waste disposal in regions of county size or smaller.[5] Sanitary sewer district authorities may be created for regions which are county size or larger.[6] These authorities cover the natural drainage area of any pollution threatened river, stream or estuary. They also have the power to prevent the discharge of any sewage into rivers by bringing injunctive suits to enjoin the emitters.[7] Finally, sewer districts may be established by municipalities to handle their waste water treatment.[8]

Thus, sewerage authorities, county and municipal water and sewage disposal authorities, sanitary sewer district authorities and sewer districts all exist within New Jersey.



NEW JERSEY WASTE WATER MANAGEMENT SCHEME

2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required By Any Areawide Plan. [§208(c)(2)(C)].

All existing authorities have the exclusive power to construct, operate and maintain sewage treatment systems within their respective regions.[9]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, For Waste Treatment Management Purposes. [§208(c)(2)(D)].

Only municipal sewer districts do not have a statute providing them with authority to accept grants of money from any source.[10]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Revenues for the various sewage treatment systems may be raised by imposing treatment charges on users based upon the type and quantity of discharge.[11]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Sewerage authorities, water and sewage disposal authorities and sanitary sewer authorities are all required to have "uniform [charges] throughout the district for the same type, class and amount of use or service."[12] Sewer districts do not have such a mandate, but they are told to charge according to what would be determined a proper rate.[13]

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Charges against industry's portion of construction costs could be maintained by all sewer systems by exercising their revenue powers discussed above.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All existing sewer systems may be constructed or improved by using some type of bonds. All such bonds are limited to forty years duration.[14]

2.4.1 General Obligation Funding.

General obligation bonds may be issued by all municipalities and counties.[15] These bonds are limited to two percent of the value of taxable land available for counties and three and one half percent for all municipalities.[16]

2.4.2 Special Funds and Revenue Funding.

Revenue bonds are also available for all municipalities and counties.[17] In addition, sewerage authorities, water and sewage authorities and sanitary sewer district authorities are all granted revenue bonding power.[18]

2.4.3 Other Methods of Financing.

No other funding method is available.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Member communities using any of the four waste treatment agencies must pay for that amount of service which they receive.[19]

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Sewage authorities and water sewage disposal authorities are both given the directive that the discharge which is or may be injurious to the system is not to be permitted.[20] However, there is no specific statutory approval for terminating service until compliance for any sewer system and, due to the serious impact of such action would have on a community's general welfare, it should not be permitted absent such approval.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Since the Department of Environmental Protection must give its approval for any alteration of a sewer system,[21] all agencies, either directly or by seeking the Department's help, may refuse to permit any additional users to use their facilities. Specific discretion is provided by statute for county sewerage authorities.[22]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

Any civil penalty apparently could be created by regulation for water and sewage disposal authorities, municipal sewer districts and sewerage authorities since they are all given the power to promulgate any regulation which they believe necessary.[23] County sewerage authorities have no such provision and, they, might be prevented from creating any additional penalties for non-compliance.

2.7 Authority to Accept For Treatment Industrial Wastes. [§208(c)(2)(I)].

All sewer systems may accept industrial wastes.[24] These discharges are subject to no particular limitation by statute. However, all agencies except county sewerage authorities could certainly promulgate regulations permitting refusal of non-complying wastes. Moreover, if such discharges were deleterious to the system itself (as would often be the case with

a biological sewage treatment process), it is most unlikely that any agency could not refuse them.

3.0 SUMMARY

Due to the variety and flexibility of the existing waste water treatment agencies New Jersey should have little difficulty in complying with federal requirements.

3.1 Deficiencies

1. Re: 2.2, Municipal sewer districts should be empowered to receive grants for any waste management purpose.

2. Re: 2.6, Permission to refuse any municipality's waste should be statutorily provided.

4.0 BIBLIOGRAPHY

1. Sussna & Kirrloff, Water Management Control, 94 N.J.L.J. 49 (1971).

2. ENVIRONMENTAL PROTECTION AGENCY, 1972 COMPENDIUM OF STATE WATER POLLUTION CONTROL AGENCIES WITH REGULATORY/POLICY-MAKING RESPONSIBILITY (1971).

FOOTNOTES

1. N.J.R.S. Ann. §13: 1D-1 et.seq. (Supp. 1972).
2. N.J.R.S. Ann. §13: 1D-5 (Supp. 1972).
3. N.J.R.S. Ann. §13: 1D-9 (Supp. 1972).
4. N.J.R.S. Ann. §40: 14B-2 (1967).
5. N.J.R.S. Ann. §40: 14B-2 et.seq. (1967).
6. N.J.R.S. Ann. §40: 36A-2 et.seq. (1967).
7. N.J.R.S. Ann. §40: 36A-23.1 (1967).
8. N.J.R.S. Ann. §40: 63-1 et.seq. (1967).
9. N.J.R.S. Ann. §§40: 14A-6, 14A-7, 14B-20, 23-19.3, 36A-21 (1967).
10. N.J.R.S. Ann. §§40: 14A-7, 14B-21, 23-19.3 (1967).
11. N.J.R.S. Ann. §§40: 14A-8(b), 14B-22, 36A-43, 63-7 (1967).
12. N.J.R.S. Ann. §§40: 14A-8(b), 14B-22, 36A-43 (1967).

13. N.J.R.S. Ann. §40A: 63-7 (1967).
14. N.J.R.S. Ann. §40A: 2-22(F)(1)(1972).
15. N.J.R.S. Ann. §40A: 2-3(a)(1972).
16. N.J.R.S. Ann. §40A: 2-6(1972).
17. N.J.R.S. Ann. §40A: 2-45(1972).
18. N.J.R.S. Ann. §§40: 14A-10, 14B-25, 23-19.8, 36A-60 (1967).
19. N.J.R.S. Ann. §§40: 14A-21, 14B-22, 36A-43, 63-79, 63-98 (1967).
20. N.J.R.S. Ann. §§40: 14A-28(b), 14B-60(b)(1967).
21. N.J.R.S. Ann. §13: 1D-9(k)(Supp. 1971).
22. N.J.R.S. Ann. §36A-35 (1967).
23. N.J.R.S. Ann. §14A-7, 14B-20, 63-7 (1967).
24. N.J.R.S. Ann. §§40: 14A-3(8), 14B-3(9), 36A-19, 63-10 (by implication)(1967).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

NEW YORK REPORT
(1972)

1.0 OVERVIEW

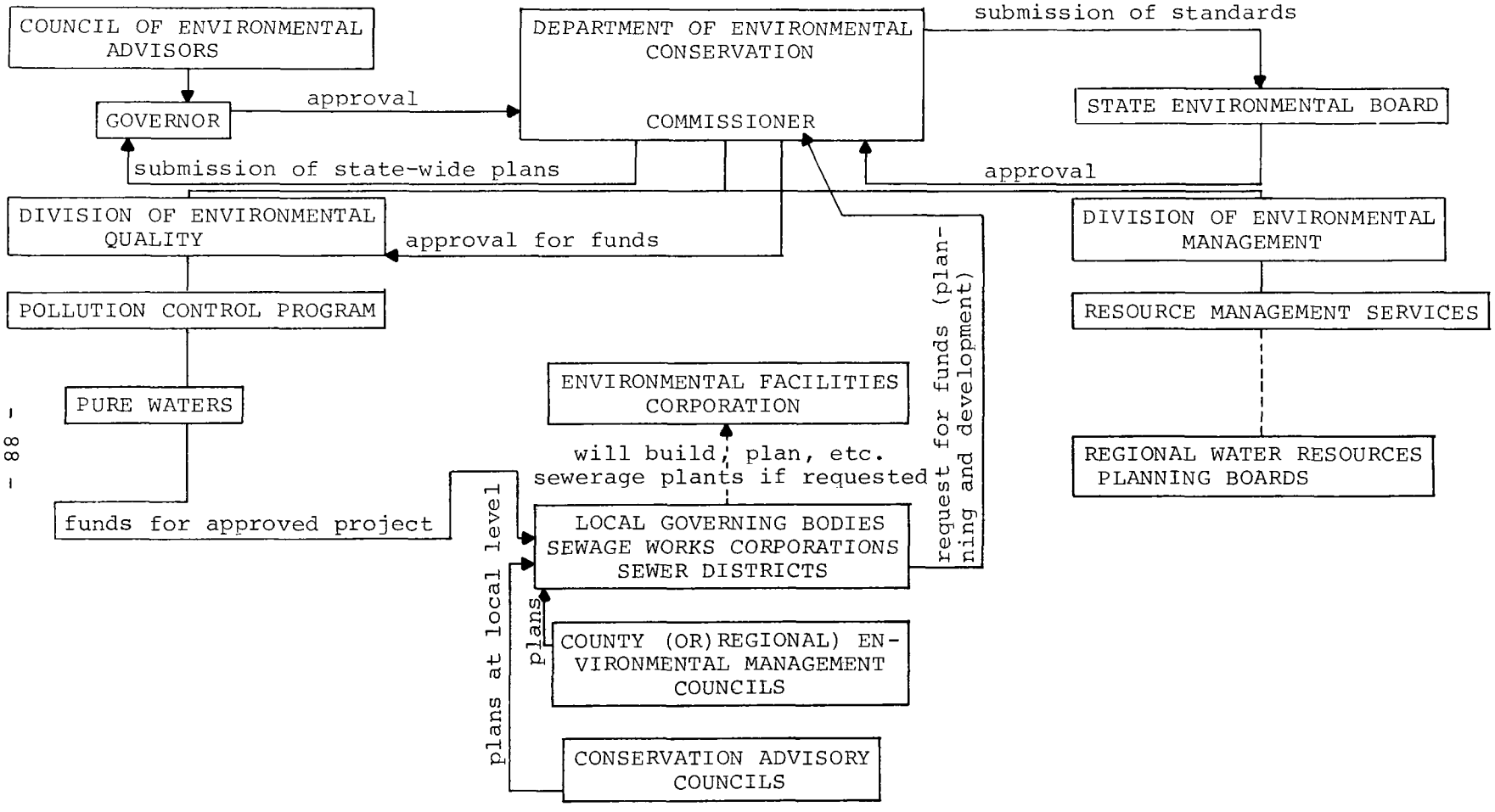
1.1 Description of Existing Agencies

New York State's waste management and planning functions have been revised over the past two years.[1] Under these recent laws the Department of Environmental Conservation was created to act as a central agency for all of the state's pollution control functions.[2] Thus, the Department is the state's enforcement and standard setting agency;[3] standards must be submitted for approval by the State Environmental Board.[4]

While the Department of Environmental Conservation acts to oversee statewide pollution control, local governmental bodies build, operate and manage sewage treatment facilities and systems. These facilities and systems are operated either by a county-level management, as a county sewer district,[5] or by any municipal-level management. A town, unincorporated village or approved incorporated village, may establish sewer districts[6] which may be consolidated into sewage disposal districts.[7] Any group of two or more of these municipalities may also join together to form joint sewer districts.[8] Villages and cities have their own sewage disposal systems: sewage systems for cities and sewerage systems for villages.[9] Any municipality or county may contract to have its sewage treatment facilities built and/or managed by the state-owned Environmental Facilities Corporation.[10]

The Department of Environmental Conservation may order the construction of any of these facilities should it determine that they are necessary.[11]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All county and municipal sewage disposal districts may construct, operate and improve treatment facilities and systems.[12]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [208(c)(2)(D)].

All county and municipal sewage disposal districts may apply for and receive funds from all sources.[13]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Charges for the use of a sewer system known as "sewer rents" may be imposed by authorized cities, counties, villages and towns.[14]

These rents may be based upon "the volume and character of sewage, industrial waste and other wastes discharged into the sewer system."[15]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

Since charges may be based on the volume and character of the effluent, each category of user could be charged its proportionate share of the costs of operation and maintenance.[16]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Industrial users may be assessed for that portion of the construction costs which has specifically benefited them by

town, village and county systems.[17] City systems would need to recoup construction costs by using the sewer rent method, and, since this may be done on an effluent characteristics basis, industrial construction costs could be recovered.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

Short-term indebtedness is permissible for all municipalities through bond anticipation and tax anticipation notes.[18] Long-term indebtedness is also authorized as described in paragraph 2.4.1 and 2.4.2

2.4.1 General Obligation Funding.

Two or more municipalities which have agreed to provide joint sewage treatment facilities may issue general obligation bonds, either jointly or severally.[19] Such bonds must mature within forty years if for new construction, and within thirty years if for repair or replacement of equipment.[20]

Constitutional authority exists to allow counties, cities, villages and towns to pledge their full faith and credit for the payment of indebtedness.[21] The same time limitations apply to these bonds as apply to bonds for joint projects.

2.4.2 Special Funds and Revenue Funding.

Revenue bonds for the purpose of financing waste treatment facilities may be issued by counties and municipalities.[22] Such bonds may be financed by revenues from sewer rents.[23]

2.4.3 Other Methods of Financing.

New York State will pay up to thirty percent of the cost of facilities with this amount reduced proportionately with any federal assistance over sixty percent of that cost.[24]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

There exists statutory authority to enable the agencies to charge communities proportionately:

> Each . . . municipality . . . shall pay its just and proportionate share for the [sewage system]. . . .

including the cost for the removal of sewage and of maintenance and carrying charges of the system.[25]

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §208 Applicable to Such Area. [§208(c)(2)(H)].

Municipalities and districts have express statutory authority to enter into contracts among themselves and third parties for joint operation of a sewage disposal system.[26] Included in this authority is the power to jointly supervise the operation of the system.[27] From this it is reasonable to imply the authority to refuse to receive wastes from a party in violation of the agreement.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

Since any increase in effluent discharge requires the Department of Environmental Conservation's approval,[28] any new or additional hook-ups can be refused at the state level. Such a result could also be obtained by local systems either by delegation or by having the Department refuse a permit until the proposed expansion complies with the state-wide plans.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Additional sanctions are not expressly provided for any sewer systems.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

No express provision grants any system the right to receive industrial wastes. However, the general statutes which provide for sewer controls for all systems includes industrial wastes within its definition of sewage and, thus, industrial sewage treatment would reasonably seem permissible.[29]

3.0 SUMMARY

New York's statutory framework for waste water management is extremely consolidated, as evidenced by the fact that each municipality's powers are often supplemented by statutes found

elsewhere in the Consolidated Laws. Still, few objections can be found which would preclude town, village and county systems from receiving funds. Cities have only one statute concerning their sewage systems; legislation might be required for their systems. Legislation for assuring proportionate community payments is notable.

3.1 Deficiencies

Re: 2.3.2, Cities should expressly be provided with some system whereby they would be able to recoup their expenditure for industry's portion of construction costs.

Re: 2.7, Statutory powers concerning treatment of industrial waste would eliminate any possible uncertainty in this respect.

4.0 BIBLIOGRAPHY

1. Macchiargla, Local Finances under the New York State Constitution with an Emphasis on New York City, 35 Fordham L. Rev. 263 (1966).

2. Comment, Water Pollution Control in New York, 31 Albany L. Rev. 50 (1967).

3. Comment, Water Pollution, 35 Albany L. Rev. 198 (1971).

4. The Fresh Water of New York State: Its Conservation and Use (L. Hitchcock, ed. 1967).

5. E. Haskell, Managing the Environment: Nine States Look for New Answers (1971).

6. 1970 Report of the Joint Legislative Committee on Environmental Management and Natural Resources (Legislative Doc. No. 13, 1970).

7. Report of the Joint Legislative Committee on Environmental Management and Natural Resources, The Challenge of the Seventies -- A Managed Environment for New York State (Legislative Doc. No. 12, 1971).

8. Ronan, Proposed Reorganization of the Executive Branch of New York State Government (1959).

9. J. Weinstein, Essays on the New York Constitution (1966).

10. The New York Red Rook (79th ed. 1970).

FOOTNOTES

1. New York's Environmental Conservation Law, §1-0101 et seq. (1973), was just revised in this past legislative session, having been in existence for less than two years.
2. Environmental Conservation Law (E.C.L.), §3-0101 (1973).
3. E.C.L., §3-0301 (1973).
4. E.C.L., §5-0107 (1973).
5. County Law, §250 et seq. (1972).
6. Town Law, §190 (Supp. 1972).
7. Town Law, §190-b (1965). Since these have the same powers as sewer districts they will not be further discussed.
8. Town Law, §198(f)(1965).
9. Gen. City Law, §20 (1968); Village Law, §14-1400 (1973).
10. Public Authorities Law (P.A.L.), §1285 (Supp. 1972).
11. This power originally, and apparently again in 1971 (see Public Health Law, §1104 (1971)), was statutorily assigned to the Department of Public Health. Since the consolidation apparently did not include this section, there is no evidence that this function was assigned to the Department of Environmental Conservation except for E.C.L., §3-0301 (1972). This Section apparently preserves E.C.L., §77 (1970) (repealed) and, thus, prevents reversion of an element of water pollution pollution control to the health department.
12. Town Law, §198 1(a)(1965); County Law, §§263, 268 (1972); Gen. City Law. §20 (Supp. 1972); Village Law, §14-1400 (1973).
13. E.C.L., §17-1903 (1973).
14. Gen. Municipal Law, §451 et seq. (1965).
15. Gen. Municipal Law, §451(1)(1965).
16. Id.
17. County Law, §270 (1972); Town Law, §202 (1965); Village Law, §14-1432 (1973).
18. Local Fin. Law, §§23, 24 (1968).
19. Local Fin. Law, §15 (1968).
20. Local Fin. Law, §11(4)(1968).
21. Const. of N.Y. Art. 8, §1. See also Local Fin. Law §10 (1968).
22. Const. of N.Y. Art. 8, §5. See also Gen. Municipal Law §403 (1965).
23. Gen. Municipal Law, §453 (1965).
24. E.C.L., §17-1905 (1973).
25. Gen. Municipal Law, §120-h (1965).
26. Gen. Municipal Law, §120-a et seq. (1965).
27. Gen. Municipal Law, §120-b (1965).
28. Environmental Conservation Law, §17-0701(1)(B)(1973).
29. Gen. Municipal Law, §451(4)(1965).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

PUERTO RICO REPORT

(1972)

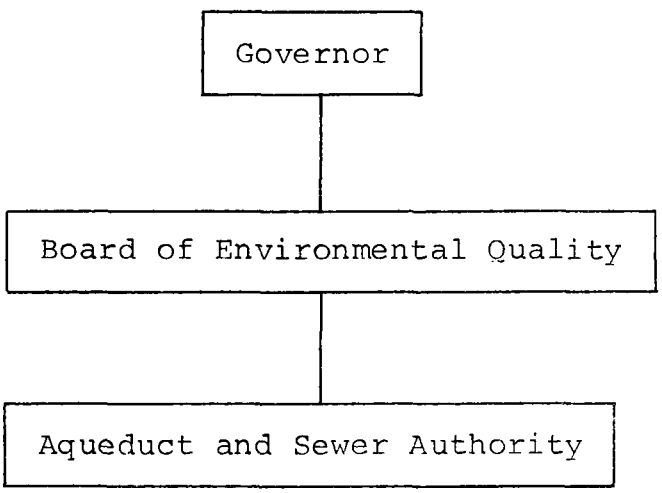
1.0 OVERVIEW

1.1 Description of Existing Agencies

Puerto Rico's waste water management system is organized on a centralized territory-wide basis. Its newly-created Board of Environmental Quality handles all standard setting and pollution abatement duties.[1] Both this Board and the Secretary of Health on advisement from the Water Pollution Control Advisory Board may declare where and to what extent sewage may be discharged into Puerto Rican waters.[2]

Sewage management is conducted by the Aqueduct and Sewer Authority.[3] This authority, created in 1945, consolidated all of the existing independent municipal sewer districts into the one territory-wide agency. Those municipal mayors who felt that they were aggrieved by this action had ten days in which to petition for exclusion from the Authority.[4] Since this agency is territory level any act authorized by the government presumably will enable the Department to comply with the Act's provisions.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

The Aqueduct and Sewer Authority may "hold, operate, and administer" the island's sewer system.[5] This should be sufficient authority to satisfy this section.

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes.

The Aqueduct and Sewer Authority is empowered to "accept grants of any kind from any source."[6]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

A broad provision grants the Authority power to

> determine, fix, alter, charge and collect. . .reasonable rates, fees, rentals, and other charges for the use of the facilities, or for. . .sewerage services. . .[7]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Presumably the broad grant to assess reasonable charges, discussed above, would be sufficient to charge each user category its part of the services' cost.

2.3.2 Full Recovery Will be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Again, construction costs may be recovered under the power, discussed above, to "collect. . .other charges. . .for sewerage services. . ."

2.4 Authority to Incur Short- and Long-term Indebtedness [§208 (c)(2)(F)].

No time restrictions are placed on the revenue bonds which the Authority may issue.

2.4.1 General Obligation Funding

The Authority is not empowered to issue general obligation bonds.

2.4.2 Special Funds and Revenue Funding.

Revenue bonds may be issued to finance any construction or modifi cations of treatment facilities, payable exclusively from the Authority's revenues.[8]

2.4.3 Other Methods of Financing.

No additional funding is available.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Presumably since reasonable rates are to be paid by all users, the communities also all must pay only their proportionate share. See above.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Since waste treatment is handled at the territory level it is most probable that compliance may be enforced directly through the Authority's regulatory and rule making powers.[9]

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

Again, it is most probable that hook-ups may be denied through the Authority's general rule-making powers.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

Since rules may be made to insure efficient operation of the

facilities[10] additional penalties probably also may be promulgated.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

The sewage system may receive industrial wastes.[11] Although no specific provision exists for regulating industrial waste quality, rules may be promulgated to obtain this objective since such regulation is assuredly necessary for the facilities' "efficient operation."

3.0 SUMMARY

Puerto Rico's waste water management system should fully comply with the Act's provisions.

4.0 BIBLIOGRAPHY

None.

FOOTNOTES

1. Laws of Puerto Rico Ann. tit. 12, §§1131(12), (14), (22), (Supp. 1972).
2. Laws of Puerto Rico Ann. tit. 24, §§594, 597, (1954); tit. 12, §1131(19), (Supp. 1972).
3. Laws of Puerto Rico Ann. tit. 22, §§141 et seq. (1964).
4. Laws of Puerto Rico Ann. tit. 22, §145(b)(1964). Local systems, should they exist at all, will not be treated since there is no statute concerning their establishment and, thus, no readily available source for that inquiry.
5. Laws of Puerto Rico Ann. tit. 22, §144(e)(1964).
6. Laws of Puerto Rico Ann. tit. 22, §144(h)(1964).
7. Laws of Puerto Rico Ann. tit. 22, §144(i)(1964).
8. Laws of Puerto Rico Ann. tit. 22, §152 (1964).
9. Laws of Puerto Rico Ann. tit. 22, §144(j)-(h)(1964).
10. Laws of Puerto Rico Ann. tit. 22, §144(j)(1964).

VIRGIN ISLANDS
(1972)

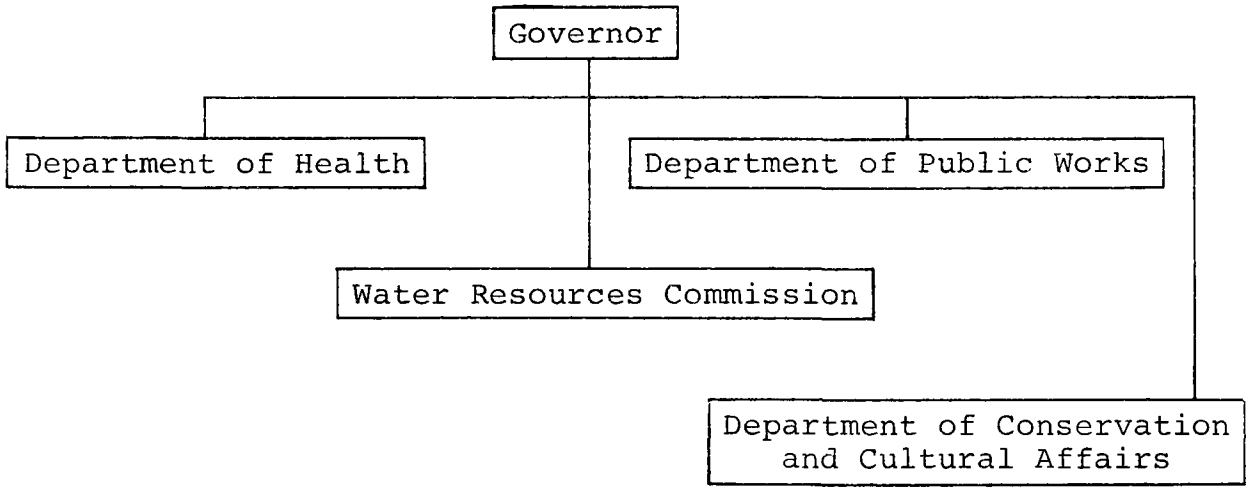
1.0 OVERVIEW

1.1 Description of Existing Agencies

Four territory-level administrative agencies manage all water pollution matters for the Virgin Islands. Pollution standards are promulgated by the Water Resources Commission[1] and the Department of Health.[2] The Department of Conservation and Cultural Affairs enforces these standards.[3]

Waste water management is handled by the fourth agency, the Department of Public Works.[4] This agency operates all of the Island's sewer systems. Since this agency is territory-level any act authorized by the government persumably will enable the Department to comply with the Act's provisions.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

The Department of Public Works is directed to "repair, maintain, operate and administer the sewage disposal system."[5]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, For Waste Treatment Management Purposes. [§208(c)(2)(D)].

The Department of Conservation and Cultural Affairs is empowered to "administer grants to the Government of the Virgin Islands for the construction of sewage treatment works."[6] This provision should not preclude the Department of Public Works from so acting, especially in light of the fact that it is already so empowered with respect to federal and for other government works.[7]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Fees may be charged users at a rate to be suggested by the Department of Public Works and determined by the Governor.[8]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Administration of the system by a territory-wide agency should ensure proportionate payment by each user category.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Since fees are to be determined by the Governor he should be

able to charge industrial users for their portion of the construction costs.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

The Virgin Islands government may issue both general obligations bonds and revenue bonds.

2.4.1 General Obligation Funding.

General Obligation bonds may be issued by the Islands for a period of not more than thirty years.[9] All such indebtedness may never exceed ten percent of the aggregate assessed valuation of taxable Virgin Island property.

2.4.2 Special Funds and Revenue Funding.

Bonds which are redeemable solely from a public improvement revenue may be issued by the government.[10]

2.4.3 Other Methods of Financing.

No other funding is available.

2.5 Authority to Assure In Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Since fees are to be determined by the Governor all communities should be assured of proportionate treatment.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality of Subdivision Thereof, Which Does Not Comply With Any Provisions of An Approved Plan Under §202 applicable to Such Area. [§208(c)(2)(H)].

Although the Department of Public Works is directed to "administer" the Island's sewage disposal system, this does not necessarily include regulation of sewage discharges. The Department of Health has a statutory obligation to determine what types of sewage may be discharged into the public sewers.[11] This, however, should not preclude the Department of Public Works from making this determination through its recommendations to the Governor.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Again, this authority could most likely be exercised by way of recommendations or requests from the Department to the Governor.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

Other penalties might be obtained the same way as above.

2.7 Authority to Accept For Treatment Industrial Wastes. [§208(c)(2)(I)].

The Department of Public Health's determination is necessary to provide for acceptance by the public sewer system. Probably industrial wastes still could be refused if they did not comply with Public Works' suggested rules and regulations.

3.0 SUMMARY

The Department of Public Works, as a territory-level agency, should have an advantage over its municipal level counterpart. There are very few statutory provisions which cover Virgin Islands sewage management. If the fact that the Governor makes the final determination of what rules should be promulgated does not undermine the agency's ability to comply with the Act, the Department's powers are fully compatible with the Act's requirements. This statutory framework shows how minimal, broad statutory powers may provide an agency with the potential of fully complying with the Act.

4.0 BIBLIOGRAPHY

None

FOOTNOTES

1. Virgin Islands Code Ann. tit. 12, §163.
2. Virgin Islands Code Ann. tit. 19, §1522 et seq.
3. Virgin Islands Code Ann. tit. 3, §401 et seq. (1967).
4. Virgin Islands Code Ann. tit. 3, §138(4)(1967).
5. Id.

6. Virgin Islands Code Ann. tit. 12, §184(j).
7. Virgin Islands Code Ann. tit. 3, §138(11)(1964).
8. Virgin Islands Code Ann. tit. 3, §138(4)(B)(1967).
9. Revised Organic Act of 1954 §8(b)(ii)(A).
10. Revised Organic Act of 1954 §8(b)(i)(Supp. 1972). See also 4 Virgin Islands Atty. Gen. Repts. 5 (Jan.21, 1960).
11. Virgin Islands Code Ann. tit. 19, §1522 (2)(1964).

REGION III

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

DELAWARE REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Enforcement and regulatory powers relating to water pollution control in Delaware reside, generally, within the Department of Natural Resources and Environmental Control (DNREC).[1]

The Secretary of the Department is authorized to hold public hearings and conferences with suspected violators of the State's water pollution control laws and issue appropriate orders on the basis of those hearings and conferences.[2] The Secretary is also authorized to hold public hearings with respect to any permit, variance or grant for which an application has been made.[3]

The DNREC may conduct inspections of establishments for the purpose of investigating possible pollution sources and issue pollution abatement orders.[4] Also, its approval is required before construction or alteration of sewage systems can be undertaken.[5]

Within the DNREC are the Division of Environmental Control (DEC) and the Delaware Air and Water Resources Commission (DAWRC). The DEC's powers are limited (in the field of water pollution control) to those inspection powers also possessed by the DNREC.[6]

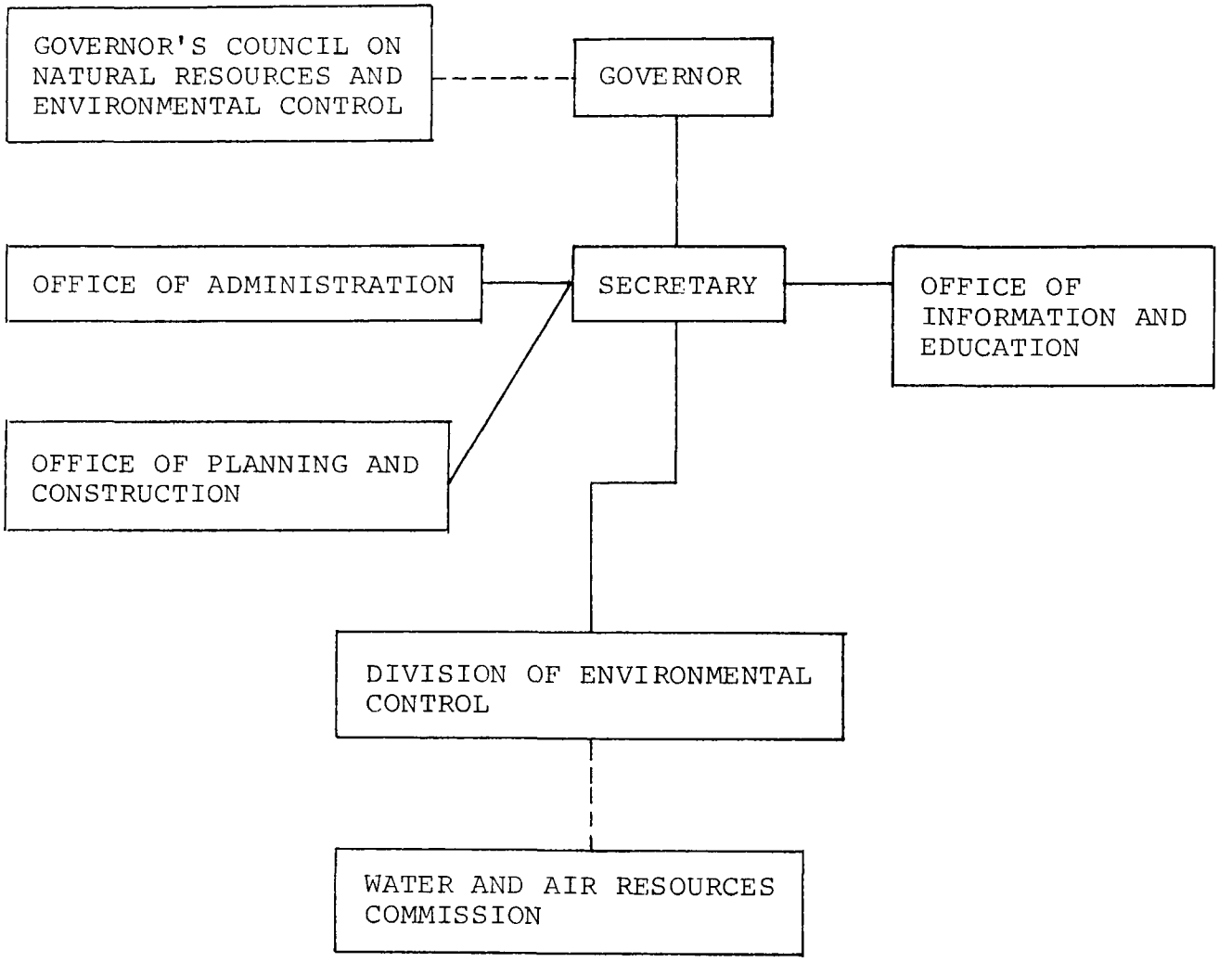
The DAWRC conducts appeals from decisions of the Secretary[7] and issues orders pursuant to the appeals.[8] It is authorized to issue orders and adopt rules and regulations, after a public hearing thereon, for the installation, use and operation of systems, methods and means for controlling water pollution.[9]

Management treatment powers are vested in local municipal sewer authorities which are created by local enabling referendums.[10] An authority's jurisdiction may extend over several municipalities as long as favorable referendum votes have been obtained from all of the affected municipalities.[11] An authority can be abolished in the same manner it was created.[12]

In addition, each of Delaware's three counties may establish one or more sewer districts to serve as management agencies.[13] Such districts are also created by referendums.[14]

1.2 Schematic Diagram of Existing Agencies

Department of Natural Resources and Environmental Control
Organization Chart of Divisions Responsible for Water Quality Control



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

As noted in paragraph 1.0, four management agencies will be analyzed in this report; sewer authorities and sewer districts (for Kent, Sussex and New Castle counties).

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208 (c)(2)(C)].

All treatment agencies under consideration are authorized to construct, operate and maintain such treatment works.[15]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All of the treatment agencies are authorized to receive grants from the federal and state governments.[16] Each provision insures that such money cannot be diverted from its intended use by providing that the grant be applied either for the purposes for which it was made or for the purposes of the chapter (which sets forth the powers and duties of the management agency).[17]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

As will be noted below, all of the treatment agencies may assess charges.

2.3.1 Each Category of User Will Pay its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Of the four agencies under consideration, sewer districts located in Kent County have the clearest authorization to meet the requirements of this paragraph; for their charges may be based on the volume and character of sewage, industrial waste and other waste discharged into the sewage system.[18]

Sewer districts located in Sussex County may charge on the basis of factors determining the type, class and amount of use or service of the sewerage . . . system.[19] Sewer authorities may

charge on the basis of any . . . factor affecting the use of the facilities furnished.[20] Both of these broad standards should enable the respective agencies to meet the requirements of this paragraph.

On the other hand sewer districts located in New Castle county must use a front footage assessment basis.[21] This would not be sufficient for purposes of the Act since this basis is not necessarily proportionate to the cost of treating each user's waste.

2.3.2 Full Recovery Will be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

For the reason noted in paragraph 2.3.1, New Castle sanitary districts will not comply with the requirements of this paragraph if assessments are based on a front-footage basis.

Only sewer authorities are specifically authorized to charge to the extent necessary to cover construction cost.[22] Since this same provision also permits authorities to charge to the extent necessary to cover the principal and interest on bonds, it is clear that they may charge for construction costs not financed through revenue bonds (i.e., the federal portion).

Provisions covering sewer districts located in Kent and Sussex Counties are more vague on this point. No provisions covering Kent's districts state what the charges must be sufficient to cover. Sussex's districts must charge an amount at least sufficient to pay principal and interest on bonds and to cover operation and maintenance of the sewer system.[23] Because of the broad grant of power to both agencies on this matter, compliance with this paragraph should be achievable.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All the treatment agencies under consideration may issue revenue bonds.

2.4.1 General Obligation Funding.

All county sanitary districts are authorized to issue general

obligation bonds backed by the full faith and credit of the counties.[24] Municipal sewer authorities, however, are prohibited from pledging the faith and credit of the state or any subdivision thereof to the payment of the principal or interest of bonds.[25]

2.4.2 Special Funds and Revenue Funding.

Sewer authorities and sanitary districts located in Kent and Sussex Counties may issue revenue bonds having a maximum maturity period of 40 years;[26] New Castle's district may issue revenue bonds of 30 year maximum duration.[27]

2.4.3 Other Methods of Financing.

Sewer districts located in Kent County may levy (ad valorem) taxes on property located within the district in order to pay for improvements made in the sewage facilities subsequent to the original acquisition or construction of such facilities.[28]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Since the sanitary districts of all counties are authorized to charge each user his share of operation and maintenance costs,[29] it is assumed that they can assure that each community pays its proportionate share.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality of Subdivision thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of the treatment agencies are specifically authorized to refuse a municipality's waste.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Any prospective user of a Sussex County Sewer district's system must first obtain a permit from the district before connecting.[30] This may, in effect, give such districts a moratorium power. It is to be noted, however, that the above provision does not state the conditions for a permit refusal, and it might, therefore, be argued that the desire merely to prevent any further hook-ups is not sufficient justification for a refusal.

Kent County sewer districts may require persons located within its jurisdiction to hook-up with its system.[31] While it might be inferred from this that such districts can also deny hook-ups, the justification for such a denial would again be questionable.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

Sewer Districts located in New Castle County are empowered to promulgate rules and regulations governing the use of sewer systems and treatment plants.[32] It would seem that such rules and regulations could provide for assessments of penalties against noncomplying municipalities.

The remaining agencies are authorized to enter into contracts with municipalities and political subdivisions for the furnishing of sewer services.[33] This, again, should be sufficient authorization to enable these agencies to comply with the requirements of this paragraph.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Sewer authorities are specifically authorized to require industries to pretreat their waste before discharging into sewer systems of the authorities.[34]

The remaining agencies are authorized to enter into contracts with industries for the furnishing of sewer services.[35] Such an ability to contract would seem to include the ability to place conditions on the furnishing of such services.

3.0 SUMMARY

Of the four management agencies discussed -- sewer "authorities" and the sewer districts for Kent, Sussex and New Castle counties -- the sewer authorities would seem able to meet the requirements of the Act with the fewest revisions of present authority. Kent and Sussex counties also meet the requirements of the Act but sewer authorities have the advantage of being most adaptable to areawide plans since their jurisdiction may cross municipal boundaries upon favorable referendum votes. The county sewer districts are apparently limited in their jurisdiction to the boundaries of a particular county.

3.1 Deficiencies

New Castle county cannot comply with paragraphs 2.3.1 and 2.3.2 to the extent their charges are based on "front footage."

While all treatment agencies may issue revenue bonds, only Kent County has any additional method of obtaining funds.

No treatment agencies are authorized to refuse to receive wastes upon noncompliance with an areawide plan.

4.0 BIBLIOGRAPHY

1. Delaware Conservationist (Issued quarterly by the Department of Natural Resources and Environmental Control, Dover, Delaware 19901).

2. Annual Report of the Department of Natural Resources and Environmental Control (Issued annually).

FOOTNOTES

1. Del. Code Ann. tit. 7, §6001 et seq. (Supp. 1970).
2. Del. Code Ann. tit. 7, §6006 (Supp. 1970).
3. Del. Code Ann. tit. 7, §6007 (Supps. 1970, 1972).
4. Del. Code Ann. tit. 7, §6303(b)(5)(Supp. 1970).
5. Del. Code Ann. tit. 7, §6307 (Supp. 1970).
6. Del. Code Ann. tit. 29,§8013 (Supps. 1970, 1972).
7. Del. Code Ann. tit. 7, §6008 (Supp. 1970).
8. Del. Code Ann. tit. 7, §6009 (Supp. 1970).
9. Del. Code Ann. tit. 7, §6011 (Supp. 1970).
10. Del. Code Ann. tit. 16, §1402 (Supp. 1970).
11. Id.
12. Del. Code Ann. tit. 16, §1404 (Supp. 1970).
13. New Castle County, Del. Code Ann. tit. 9, §§2301 (1953) et seq.; Kent County, Del. Code Ann. tit. 9, §4601 (Supps. 1968, 1970) et seq.; Sussex County, Del. Code Ann. tit. 9, §6501 (Supps. 1968, 1970) et seq.
14. Del. Code Ann. tit. 9, §§2306 (1953), 4607 (Supp. 1968), 6506 (Supp. 1968).
15. Sewer authorities, Del. Code Ann. tit. 16, §1406 (Supp. 1970), Sewer districts, New Castle County, Del. Code Ann. tit. 9, §2307(b) (1953); Sewer districts, Kent County, Del. Code Ann. tit. 9, §4611(6) (Supp. 1968); Sewer districts, Sussex County, Del. Code Ann. tit. 9, §6702(1), (2) (Supp. 1968).
16. Sewer authorities, Del. Code Ann. tit. 16, §1406(16) (Supp. 1970);

Sewer districts, New Castle County, Del. Code Ann. tit. 9, §2319 (1953). Sewer districts, Kent County, Del. Code Ann. tit. 9, §4611(1), (2) (Supp. 1968). Sewer districts, Sussex County, Del. Code Ann. tit. 9, §6702(6) (Supp. 1968).

17. Id.
18. Del. Code Ann. tit. 9, §4613(a)(4) (Supp. 1968).
19. Del. Code Ann. tit. 9, §6709(b) (Supp. 1968).
20. Del. Code Ann. tit. 16, §1411 (Supp. 1970).
21. Del. Code Ann. tit. 9, §2317 (1953).
22. Del. Code Ann. tit. 16, §1406 (Supp. 1970).
23. Del. Code Ann. tit. 9, §6708(b) (Supp. 1968).
24. New Castle County, Del. Code Ann. tit. 9, §2311(b) (1953); Kent County, Del. Code Ann. tit. 9, §4655 (Supp. 1968); Sussex County, Del. Code Ann. tit. 9, §6706 (Supp. 1968).
25. Del. Code Ann. tit. 16, §1409 (Supp. 1970).
26. Sewer authorities, tit. 16, §1408 (Supp. 1970); Sanitary districts, Kent County, Del. Code Ann. tit. 9, §4634 (Supp. 1968); Sanitary districts, Sussex County, Del. Code Ann. tit. 9, §6704(c) (Supp. 1968).
27. Del. Code Ann. tit. 9, §2311(b) (1953).
28. Del. Code Ann. tit. 9, §4617 (Supp. 1970).
29. See text accompanying notes 18, 19 and 20, supra.
30. Del. Code Ann. tit. 9, §6719 (Supp. 1968).
31. Del. Code Ann. tit. 9, §4620 (Supp. 1968).
32. Del. Code Ann. tit. 9, §2318 (1953).
33. Sewer authorities, Del. Code Ann. tit. 16, §1406(14) (Supp. 1970); Kent County sewer districts, Del. Code Ann. tit. 9, §4611(3) (Supp. 1968); Sussex County sewer districts, Del. Code Ann. tit. 9, §6702 (Supp. 1968).
34. Del. Code Ann. tit. 16, §1412 (Supp. 1970).
35. Kent County, Del. Code Ann. tit. 9, §4611(3) (Supp. 1968); Sussex County, Del. Code Ann. tit. 9, §6702 (Supp. 1968); New Castle County, Del. Code Ann. tit. 9, §2318 (1953).

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WASHINGTON, D. C. REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

By Congressional declaration the management of the District of Columbia is to be coordinated with the management of other areas of the Washington metropolitan area,[1] and in that coordinated development priority is to be given to the solution of "the problems of water supply, sewage disposal, and water pollution . . ."[2] In addition to the District of Columbia this coordinated area includes "the counties of Montgomery and Prince George in the State of Maryland, the counties of Arlington and Fairfax and the cities of Alexandria and Falls Church in the Commonwealth of Virginia."[3]

In complying with this directive, broad responsibilities for local as well as regional planning have been given to the Department of Sanitary Engineering.[4] The general functions of the Department are to

> . . . [P]lan, provide, operate and maintain sanitary services and facilities . . . including: distribution of water; control and disposal of storm water; collection; treatment and disposal of sewage; . . . [and] administration of revenue and special fund activities relating to water and sewer services . . .[5]

This department is then the primary body charged with executing those standards, regulations and controls dealing with waste treatment facilities. In the past broad responsibilities were also given to the Department as the designated "state agency"[6] under Section 303, Title III of the 1965 Water Resources Planning Act.[7]

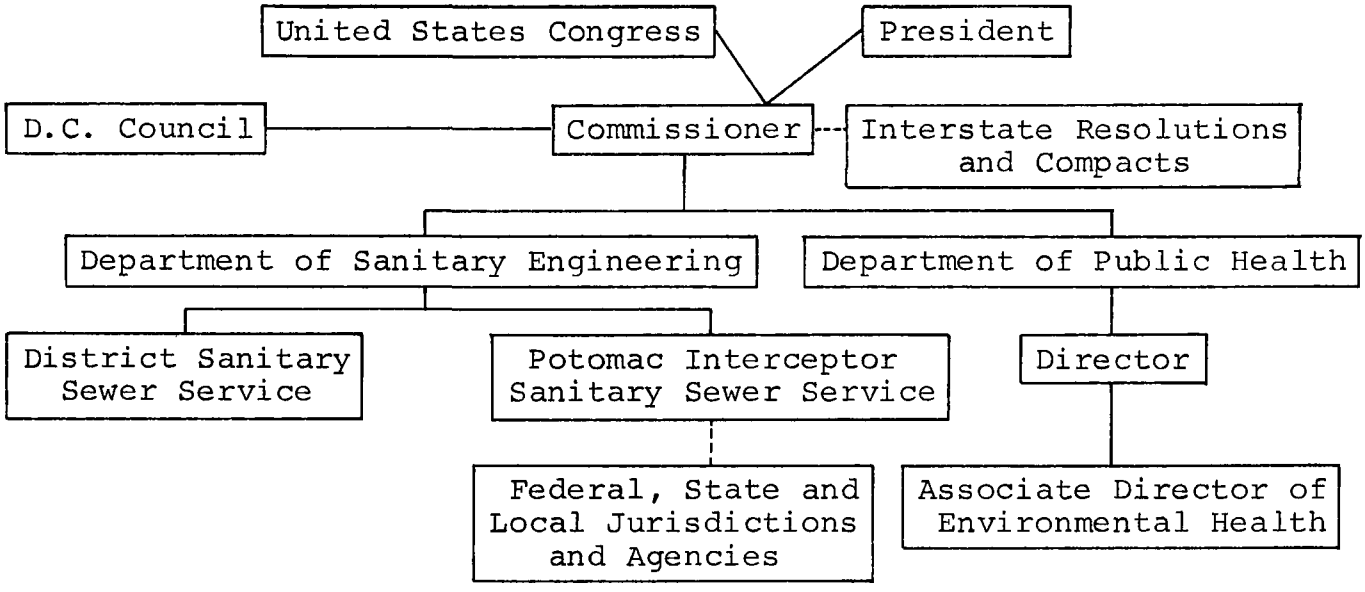
To further implement the Congressional policy of coordinated development in the Washington area the Potomac Interceptor was developed as a regional sanitary sewer system[8] and operated out of the Metropolitan Area Sanitary Sewage Works Fund of the District of Columbia.[9] This system is funded independently of the District system which is operated out of the D. C. Sanitary Works Fund.[10]

The Department of Public Health has also been delegated water pollution control responsibilities although this power is not evident by statute. These control functions are found in the Commissioner's enabling order delegating to the Associate Director for Environmental Health the responsibility for developing and implementing a program of environmental health.[11] This delegation belies the Department's numerous responsibilities as the "State Water Pollution Control Agency" under the 1965 Water Pollution Control Act.[12]

Underlying the above efforts, there is a Potomac Basin Policy Committee and Task Force created by the December 31, 1972, Joint Resolution by the Governors of the States of Maryland and Virginia and the Commissioner of the District of Columbia whose duty it is to develop an action program to deal with waste treatment, water supply, water quality and the coordination of the "planning activities and actions of local and state agencies."[13]

Compliance with District water pollution policies is grounded in several statutes the enforcement of which is not within the departmental responsibilities noted above. Under one of the two misdemeanor statutes it is a crime to throw or deposit prohibited matter in the Potomac River or its tributaries for which violation the penalty is a fine not to exceed $100 or imprisonment not to exceed six months or both.[14] Under the other misdemeanor statute the deposit of harmful substances by industrial concerns in Rock Creek, the Potomac River or its tributaries is prohibited[15] with the penalty not to exceed $300 or imprisonment for up to 90 days or both.[16] The one felony statute provides a fine of $500-$1000 or imprisonment at hard labor for one to three years or both for maliciously making the water of the District impure.[17]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or By Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Within the Department of Sanitary Engineering the Associate Director for Engineering and Construction has the explicit responsibility for the design, construction and repair of all sanitary engineering systems and facilities.[18] This authority is granted by direct statutory appropriation,[19] and by regulatory contract authority[20] pursuant to the Commissioner's regulatory powers in the sanitary sewage works area.[21]

Although not directly limited by statute, the availability of this sewer service does suffer indirect limitations through explicit restrictions on the water supply from the District.[22] Specifically water service outside the District is limited to the Washington Suburban Sanitary District of Maryland,[23] Arlington County[24] and Falls Church, Fairfax County, Virginia.[25]

The Commissioner also has direct authority[26] which he has delegated to the Department of Sanitary Engineering[27] to develop,

operate and maintain a sanitary sewer system extending from the District to the Dulles International Airport (the Potomac Interceptor) with a capacity sufficient to provide service to the airport and "the expected community growth and development in the adjacent areas" of Maryland and Virginia.[28] This is part of a regional sanitary sewer system operated and maintained by the Commissioner in cooperation with the State and local jurisdictions involved.[29]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

The District of Columbia Sanitary Sewage Works Fund does have an implied authority to accept grants or other funds from any source;[30] however, the uses to which this fund may be put are restricted to expenses related directly to the sewer system of the District,[31] expenses attributed to the District by the Interstate Commission on the Potomac River Basin,[32] and expenses for the receipt, by certain areas of the District, of sanitary sewer service from Maryland.[33]

The Commissioner also has implied regional authority to accept and utilize grants and funds received to the credit of the Potomac Interceptor fund for expenses necessary to the construction, operation and maintenance of the Interceptor.[34] Since the statute establishing this fund only talks of credits to the fund in the context of charges to users,[35] this authority to receive funds from any source is implied from the Commissioners regulatory power over the Interceptor[36] and the absence of any conflicting statutes.

2.3 Authority to Raise Revenues, Including The Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Although there is a secondary authority to raise revenue in the power to assess abutting property on a linear rate for the construction of sewers,[37] the primary District authority to raise revenue lies in the charge system to users of the sanitary sewer system.[38] This primary charge authority is based in part on a consideration of the quantity of water service to the users without any mention of the volume and nature of the effluent and the delivery flow rate.[39] The consideration of these characteristics in the charging authority may be inferred from the power of the District of Columbia Council to establish such charges as are necessary to meet the expense of furnishing

sanitary sewer service.[40] Additional authority is in the Commissioner to establish rules and regulations to carry out the Sanitary Sewage Works Code.[41]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

Although there is no specific authority to charge categories of users based on the volume, composition and delivery flow rate characteristics of the effluent, the above general authority noted in paragraph 2.3 does allow the District Council to establish "one or more sanitary sewer charges" at their discretion.[42] Therefore, by implication this general authority may allow for a charge system based on the category of user. Furthermore, the regional charging authority of the Potomac Interceptor is exercised in conjunction with appropriate Federal, State and local jurisdictions and is based on the cost of the system.[43] This general authority would appear to be sufficient to encompass cost categories of users that include the required specific considerations of the effluent.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial wastes. [§204(b)(1)(B)].

This authority of the District sewer works may only be implied generally from the power of the District of Columbia Council to set charges at a level sufficient to meet the expenses of the sewage system and its debt retirement needs.[44] Although the charging provisions of the Potomac Interceptor relate generally to users, they do explicitly provide for the recapture of construction costs attributable to the agency or local authority receiving services.[45] These provisions would adequately cover the federal portion of any industrial share of construction costs.

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

The ability of the Department to secure short-term debt is not covered by statute. There is, however, a regulatory contract authority[46] from which a short-term debt capacity may be

inferred. Although there is statutory authority for incurring long-term debt, this ability is only in the context of appropriations from the Secretary of the Treasury at the request of the Commissioner.[47] Funds from this source may not exceed $106,000,000[48] for which repayment must be made within 30 years.[49]

Similar debt capacity has been authorized for the Potomac Interceptor. Without fiscal year limitations the Department is authorized to receive an initial $3,000,000 from the federal government for construction related expenses.[50] Additional debt capacity to a ceiling of $35,000,000 is further authorized for U. S. Treasury advances.[51] These amounts are then to be repaid within a 40 year period.[52] The Department also has further authorization to receive additional federal loans which do not have to be repaid.[53]

2.4.1 General Obligation Funding.

There is no statutory provision authorizing general obligation funding. Therefore, there is no bonded indebtedness of the District resting on the general credit of the municipality, and the funding authority of the District is limited to funding by the U. S. Treasury.

2.4.2 Special Funds and Revenue Funding.

As noted in paragraph 2.4.1, there is no statutory provision authorizing these funding devices.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Within the limited area covered by the District operations this power has not been important and has not been covered by statute. However, such authority is relevant to a regional operation such as the Potomac Interceptor and is to be found by implication in the powers granted to the Commissioner to establish charges for the Interceptor in proportion to the costs assignable to any given agency or local authority.[54]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

The District sanitary sewer system is not authorized by statute to cut off sewer service. At most the Department may cut off water supply to any premises that have not paid their sanitary sewer service charge.[55] To be an effective sanction the premises involved must rely exclusively on the District for its water supply. As with other areas, powers within this section may be inferred from the Commissioner's rule making authority.[56]

The Potomac Interceptor is without even this rudimentary authority. At most such authority may only be inferred from the statutory authorization given to the Commissioner to run the interceptor under such regulations as he may prescribe.[57]

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

There are no statutory provisions authorizing such a policy. However, the Commissioner has authorized the Department to deny new or additional hook-ups to the Potomac Interceptor when the jurisdiction involved fails to comply with the regulations relating to the "connecting and tributary sewers and the users connected thereto."[58] Although this authority is pursuant to the Commissioner's regulatory powers, it should be remembered that this denial authority itself is not statutory.

Under the same limitations, the Commissioner may well have the same non-statutory authority to deny new or additional hook-ups within the District sewer system pursuant to his regulatory powers therein.[59]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Again there are no statutory provisions granting such authority to the Department, although the Department is authorized by regulation to assess users for the "repair of any damages . . ., any increased cost of operation and maintenance, and any personal liability or property damages assessed against the

District, resulting from or caused by . . . the violators of those regulations.[60]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

The Department has the overall authority to accept "sewage"[61] with that term being defined to include commercial or industrial wastes.[62] Since this is a general authority there is no specific statutory authorization to establish criteria for acceptance of such wastes although under the Commissioner's regulatory power specific criteria have been established for the Potomac Interceptor governing not only the criteria of acceptable discharges but also the criteria of prohibited wastes.[63] The power to enact similar regulations for the District sewer system may be inferred from the statutory grant of that regulatory power.[64] Other than this the Commissioner has no authority to investigate conditions relating to the discharge of waste on public or private property.

3.0 SUMMARY

The District authority given to the Department of Sanitary Engineering, exclusive of the Potomac Interceptor, is incapable of coming within the requirements of §208(c) for waste treatment agencies. This portion of the Department's powers have been built around the localized needs of the District and therefore the ability of the Department to respond with any flexibility to the needs of a growing urban area or to the broader needs of an areawide plan are quite limited (see paragraph 3.1 for specific deficiencies).

Although for the most part the Department's Potomac Interceptor authority is implied rather than specifically granted, it is much more in line with the requirements of §208(c) than their authority over the District sewer system. Therefore, any future remedial legislation might well be more beneficially directed toward the Potomac authority.

3.1 Deficiencies

Under the District system and the Potomac Interceptor system the following suggestions concern explicit statutory authority presently provided only by regulation or by general inference from broader statutory provisions. Rather than rely on implication and inference, the following should be considered in any legislative appraisal of current enactments.

1. The contracting authority under both systems should be generally outlined to cover proper areas of contract authority along with any material limitations thereon. (2.1)

2. Under the District system the ability to serve areas beyond its political jurisdiction should be clearly set out in light of the negative implications contained in the present restrictions on the availability of water service. (2.1)

3. Both systems should be given explicit authority to accept funds from any source for waste treatment management purposes. (2.2)

4. Both systems should be given the explicit authority to develop charge methods incorporating the volume, composition and delivery flow rates of the effluent and to relate these charges to categories of users. (2.3/2.3.1)

5. The District system should be given explicit authority to recapture the federal portion of construction costs of sanitary sewer service attributable to industrial users. (2.3.2)

6. Both systems should be given specific short- and long-term debt authority of some nature to supplement the present reliance on the U. S. Treasury. (2.4)

7. Both systems should also be given explicit authority to refuse to receive wastes from any municipality or subdivision thereof which does not comply with any provisions of an approved areawide plan. Further authority should also be given to deny new or additional hook-ups for failure to comply with the provisions of an areawide plan. (2.6/2.6.1)

4.0 BIBLIOGRAPHY

1. Flaherty, P. and M. G. Thornett, Laws and Regulations Relating to Water Pollution Control Affecting the District of Columbia (Department of Public Health, 1967).

2. Title 12, Department of Sanitary Engineering, D. C. Register Special Edition (Office of the Secretariat, Washington, D. C., October 12, 1970).

FOOTNOTES

1. D.C.C.E. §1-1301(1970).
2. D.C.C.E. §1-1303(1970).
3. D.C.C.E. §1-1305(1970).
4. D.C.C.E. §1, App. III, Organization Order No. 147(C.O. 65-1154, August 12, 1968, as amended)(1970).
5. Id., Part II.
6. Id., Part III E.
7. 42 U.S.C.A. §1962C-2(1965).
8. D.C.C.E. §43-1621(a)(1970).
9. D.C.C.E. §43-1621(b), (c)(Supp. 1973).
10. D.C.C.E. §§43-1602 and 43-1603(1970).
11. D.C.C.E. §1, App. III, Organization Order No. 141 (C.O. 64-193, November 14, 1968, as amended)(1970).
12. P. Flaherty & G. M. Thornett, Laws and Regulations Relating to Water Pollution Control Affecting the District of Columbia, Part D at 270-1(June, 1967).
13. Joint Resolution by the Governors of the States of Maryland and Virginia and the Commissioner of the District of Columbia, December 31, 1972.
14. D.C.C.E. §22-1702(1970).
15. D.C.C.E. §22-1703(1970).
16. D.C.C.E. §22-1703)(a)(1970).
17. D.C.C.E. §22-3118(1970).
18. D.C.C.E. §1, App. III, Organization Order No. 147, supra, Part IV, D.
19. D.C.C.E. §43-1603(a)(1970).
20. D.C.R.R. §§200 et seq. (Special Ed., October 12, 1970).
21. D.C.C.E. §43-1618(1970).
22. D.C.C.E. §43-1529(1970).
23. D.C.C.E. §43-1530(1970).
24. D.C.C.E. §43-1531(1970).
25. D.C.C.E. §43-1531(a)(1970).
26. D.C.C.E. §43-1620(1970).
27. 12D.C.R.R. §401 (Special Ed., October 12, 1970).
28. D.C.C.E. §43-1620(1970).
29. D.C.C.E. §43-1621(a)(1970).
30. D.C.C.E. §43-1602(1970).
31. D.C.C.E. §43-1603(a)-(c)(1970).
32. D.C.C.E. §43-1603(d)(1970).
33. D.C.C.E. §43-1603(e)(1970).
34. D.C.C.E. §43-1621(b)(1973 Supp.).
35. D.C.C.E. §43-1621(b) and (c)(1973 Supp.).
36. D.C.C.E. §43-1621(a)(1970).
37. D.C.C.E. §43-1511(1970).
38. D.C.C.E. §43-1605(1970).

39. D.C.C.E. §43-1606(a)(1970).
40. D.C.C.E. §43-1606(b)(1970).
41. D.C.C.E. §43-1618(1970).
42. D.C.C.E. §43-1606(b)(1970).
43. D.C.C.E. §43-1621(b)(1973 Supp.).
44. D.C.C.E. §43-1606(b)(1970).
45. D.C.C.E. §43-1621(b)(1973 Supp.).
46. 12 D.C.R.R. §§200 et seq. (Special Ed., October 12, 1970).
47. D.C.C.E. §§43-1604 and 43-1612(1970).
48. D.C.C.E. §43-1613(1970).
49. D.C.C.E. §43-1616(1970).
50. D.C.C.E. §43-1622(1970).
51. D.C.C.E. §43-1623(a)(1970).
52. Id.
53. D.C.C.E. §43-1623(b)(1970).
54. D.C.C.E. §43-1621(b)(1973 Supp.). These charges are based "upon the costs of operation; maintenance, and amortization of the cost of all planning and construction (including acquisition of rights-of-way) . . ."
55. D.C.C.E. §43-1609(1970).
56. D.C.C.E. §43-1618(1970).
57. D.C.C.E. §43-1621(a)(1970).
58. Flaherty and Thornett, supra, Part D at 261.
59. D.C.C.E. §43-1618(1970).
60. Flaherty and Thornett, supra, Part D at 263.
61. D.C.C.E. §43-1603(a)(1970).
62. D.C.C.E. §43-1601(a)(1970).
63. Flaherty and Thornett, supra, Part D at 257-261.
64. D.C.C.E. §43-1618(1970).

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MARYLAND REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

In Maryland, the Departments of Natural Resources (DNR) and Health and Mental Hygiene (DHMH) have responsibility for enforcing and administering the State's water pollution control laws. The Secretary of Health and Mental Hygiene, appointed by the Governor, has general supervision and control over the waters of the State insofar as their sanitary and physical condition affect the public health. The DHMH may make and enforce rules and regulations and order works to be executed to correct and prevent pollution.[1] In addition to his role as head administrator, the Secretary acts as advisor to municipalities and persons requesting information concerning water, sewerage and refuse disposal systems.[2] When waters of the State are being polluted to such an extent that public health is or may be menaced, the Secretary may also order that either the pollution be ceased,[3] or that more adequate water supply, sewerage, or refuse disposal systems be installed.[4] The Secretary may also order the operator of a water supply, sewerage or refuse disposal system to appoint and pay the salary of a person, approved by the Secretary, who will take charge and operate the system when, because of incompetent supervision or inefficient operation, the system is not producing reasonably expected results from a sanitary standpoint.[5] Under the Environmental Service Act of 1970, when a municipality or person fails to comply with an order of the Secretary, the Secretary must direct the Maryland Environmental Service (MES) to take necessary remedial actions, whether it involves taking over or expanding an existing sewerage or refuse disposal system or constructing and putting into operation a new system.[6]

The Attorney General and, in particular, the counsel to the DHMH render legal aid, advice and counsel to the DHMH.[7] The Board of Review hears appeals from decisions of the DHMH.[8]

The organization, powers and duties of the upper-level administrative units in the DNR are generally parallel with those of comparable units in the DHMH. However, the Department of

Water Resources (DWR) and the Maryland Environmental Service (MES) are specifically charged with the implementation of the DNR's water pollution abatement program.

The DWR may issue, modify or revoke orders (1) prohibiting discharges of wastes into State waters or (2) requiring the construction, modification, etc. of new or existing treatment works.[9] It may also issue, continue in effect, revoke, modify or deny permits for the discharge of wastewaters into State waters and for the installation, modification or operation of disposal systems.[10] Without such permits the above listed activities are unlawful.[11]

Whenever the DWR believes a violation of the pollution abatement provisions has occurred it may order the violator to take corrective measures.[12] Upon failure of a person to comply with an order of the DWR to abate pollution, the director of the DWR may order the MES to provide projects required to abate the pollution.[13] Any violator of the pollution abatement provisions or non-compliance with a DWR order is subject to fine and conviction.[14] The Attorney General is charged with the duty of prosecuting such cases and obtaining injunctions.[15] Finally, the DWR is responsible for developing "comprehensive programs for the prevention, control and abatement of pollution of waters of the State."[16]

In cooperation with the affected municipalities, the MES is responsible for the planning, integration and establishment of geographic service regions and districts.[17] It is also responsible for the development of five-year plans for each region.[18]

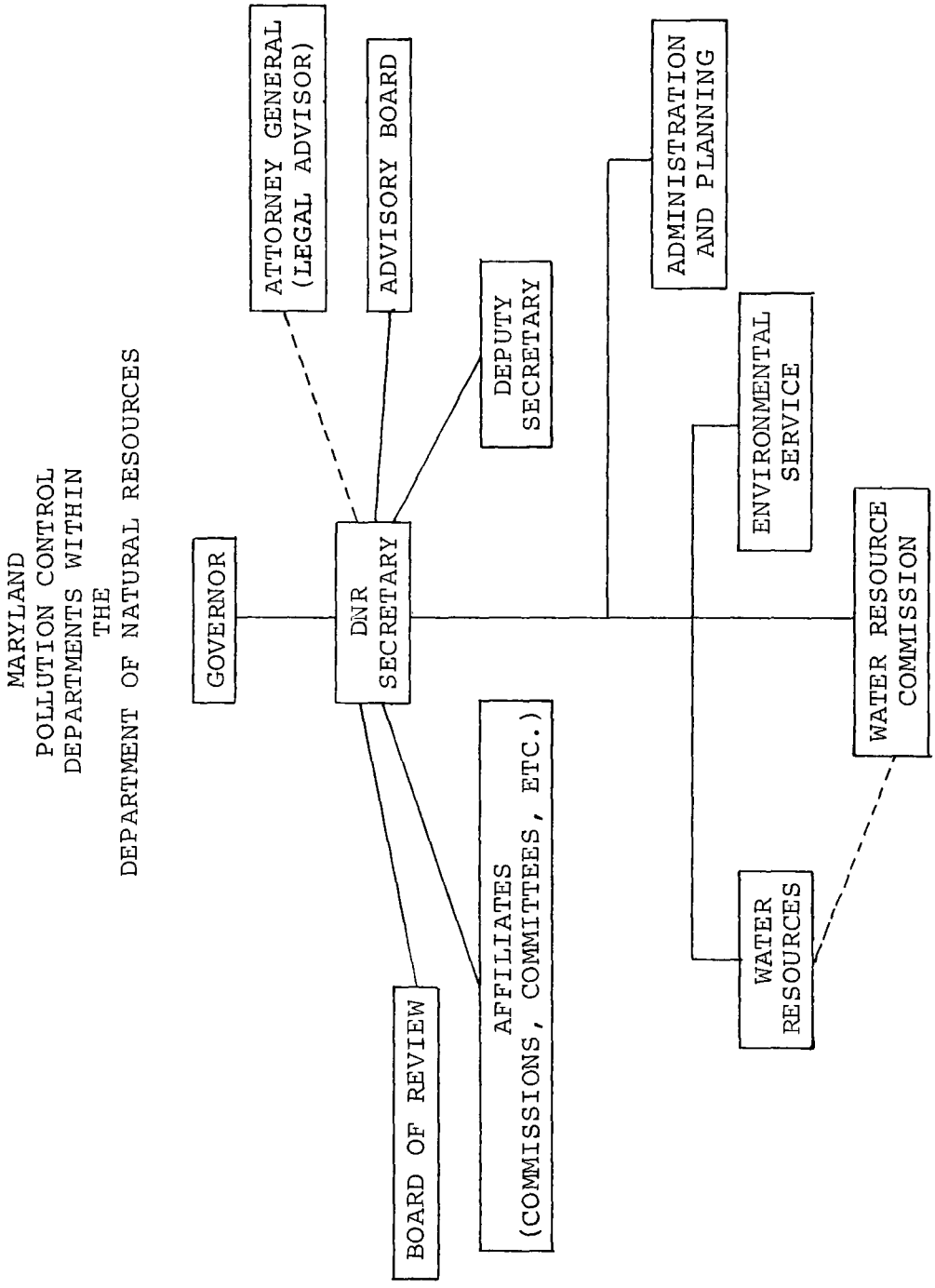
In addition to the MES's responsibility of providing pollution abatement facilities when so ordered by the DWR or DHMH, it may construct, operate and maintain such facilities for municipalities or persons which so request.[19] In addition to the MES, there also exist a number of local and regional management agencies.

The governing body of a municipality[20] may act as the management agency for facilities located in the municipality.[21] The governing body (hereinafter referred to as the Board) of a municipality or governing bodies of two or more municipalities may, by ordinance(s) or resolution(s), create a sewer authority which acts as a management agency in the municipality or municipalities represented by the above mentioned Board.[22]

In addition, the governing body (hereinafter referred to as the Commission) of one county or governing bodies of two or more counties may, by ordinance(s) or resolution(s), create a sanitary district which acts as a management agency in the counties represented by the above mentioned Commission.[23]

Some of the major jurisdictional limitations placed on districts and authorities are (1) neither a Board nor a Commission may duplicate or compete with existing utilities,[24] and (2) no county or municipality which has created a district or authority may thereafter create any other district or authority serving the same area.[25]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

The analysis of existing treatment agencies includes the four noted in paragraph 1.0: municipalities, sewer authorities, sanitary districts and Maryland Environmental Service (MES). With respect to each topic discussed, the capacity of each such agency is discussed.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

The governing body of a municipality[26] may construct, purchase, operate and maintain sewerage facilities[27] (defined to include treatment plants).[28] Sewer authorities and sanitary districts are established in order to (and, hence, are authorized to) "acquire, construct. . .maintain and operate a project."[29] "Project" is defined to include a "sewerage system,"[30] which is in turn defined to include sewage treatment plants.[31]

The MES is authorized to acquire, construct, operate and maintain waste water purification projects.[32] Such projects include facilities which receive, treat and dispose of municipal, industrial and individual sewage and waste.[33]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Municipalities are authorized to receive grants only from the federal government.[34] There are no express provisions which require proper channeling of such grants. It should be noted, however, that the federal government will place conditions on the use of such grants when they are made. This should provide adequate protection to assure proper use.

On the other hand, sewer authorities,[35] sanitary districts,[36] and the MES[37] are authorized to receive and utilize grants and funds from any source, including the federal government. In addition, all these provisions assure that the grants and funds will not be misused by requiring that they be "held, used, and applied only for the purpose for which such grants and contributions may be made."

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Municipalities and sewer authorities are authorized to charge for services in an amount sufficient to cover the interest and principal on bonds (see paragraph 2.4) and the cost of maintaining and operating sewage systems.[38] In addition, the governing body of a municipality is authorized to assess a tax sufficient to cover the amount of interest on the bonds which could not be paid off by the use of funds received from the service charges.[39]

Sanitary districts are authorized to charge for connection to a sewer line in an amount sufficient to pay the principal and interest on bonds (see paragraph 2.4).[40] Similarly, authorization is provided for service charges or assessments sufficient to cover maintenance, repair and operation of a sewerage system.[41]

The MES can charge municipalities and persons located in that service district for the full cost of the project,[42] with "persons" defined to include both individuals and industries.[43] "Cost" is defined to include, among other items, the purchase price or construction cost of the facility plus operation and maintenance costs.[44]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

Charges which municipalities assess and use to pay off the construction of sewerage systems are determined on a "foot frontage" basis.[45] The basis or methods for charges covering operation and maintenance are not listed. Thus, it appears that the governing bodies of municipalities are left to their own devices in determining charges. If a "foot frontage" basis is adopted this definitely would not satisfy the "appropriate share" test of the Act, since the frontage of a particular piece of property may not correspond to the user's "appropriate share of the cost of operation and maintenance."

Charges assessed by sewer authorities may be based on "any . . . factor affecting the use of the facilities furnished."[46] This general authorization enables authorities to charge on the basis of quantity, quality and rate of flow, thereby permitting compliance with the "appropriate share" test of the Act.

Sanitary districts are authorized to base their charges "on whatever reasonable basis the Commission selects."[47] This authorization is sufficiently broad to permit compliance with the Act.

Charges assessed by the MES for operation and maintenance will be based on, but not limited to, "a formula reflecting the volume and characteristics of the wastes as they influence transportation, purification, final disposition and time pattern of discharge."[48] This provision conforms with the requirements of the Act.

Therefore, except in the case of municipalities, for which no express provision is made for establishing treatment charges to users, all treatment agencies appear to have the authority to charge users for their appropriate share of treatment costs.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204 (b)(1)(B)].

Municipalities are to operate sewer facilities for the use and benefit of persons, firms and corporations.[49] In addition, municipalities are authorized to recover construction costs through charges on users.[50] Thus, it appears that municipalities may receive industrial wastes and, hence, charge construction costs against user industries. As noted in paragraph 2.3.1, however, the charges are based, not on treatment costs, but rather, on a "front footage" computation. For a discussion of the problem associated with such a basis, see paragraph 2.3.1.

Sewer authorities and sanitary districts must charge for their services in an amount required to cover (among other items) the principal and interest on the bonds[51] (see paragraph 2.4). There may be some difficulty for sewer authorities and sanitary districts to comply with the Act under these provisions if recovery is made a part of the service charge system. This follows since authorities and districts are statutorily required to pay the principal and interest on bonds through service charges, and they may be precluded from recovering the remainder of construction costs (i.e. the "federal share") by virtue of a negative implication. This problem may, however,

be avoided if the terms of the grant or contract with the granting agency require such recovery and if the sewer authorities or sanitary districts are empowered to accept such grants or enter into such contracts. It can also be avoided by recovering such share apart from service charges.

As noted in paragraph 2.3, the MES can recover construction costs through charges on municipal, industrial and individual users. Thus, MES could recover the federal share of such construction costs. The formula used to compute charges for operation and maintenance is discussed in paragraph 2.3.1. This formula provides for charges based on how much it costs to treat each industry's waste. A similar pro-ration could be used to determine the "construction costs of treatment works reasonably attributable to treatment of such industrial wastes."

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

As will be noted below, all four management agencies have bonding powers of some type. Throughout the following discussion it will be assumed that, if there is no specific authority to incur short-term indebtedness, such authority is implicit in the absence of minimum maturity restrictions on long-term issues. See also the comments in paragraph 2.4.3 with respect to temporary loans and advances.

2.4.1 General Obligation Funding.

The governing body of a municipality is authorized to issue general obligation bonds without prior legislative authorization. The bonds are to be nontaxable by the state, may not have a maturity period greater than 50 years and their total value may not exceed an amount equal to five percent of the assessed value of all property listed for taxes in the said municipality.[52]

Bonds may be issued by resolution of the governing body of a municipality.[53] Such bonds may not have a maximum maturity period exceeding 40 years.[54] If the resolution so provides, the bonds will be revenue bonds.[55] However, if nothing is stated in the resolution concerning the type of bond issued, it is statutorily presumed that they are general obligation bonds.[56] The maximum maturity period of the bonds is also limited to 40 years[57] and since this provision was enacted subsequent to the previously mentioned 50 year maturity

period, the 40 year period should prevail as the maximum maturity period.

Sanitary districts are authorized to issue general obligation bonds subject to prior approval by the governing body or bodies of the affected municipality or municipalities.[58] Such bonds are nontaxable, may not have a value which exceeds an amount equal to 25 percent of the assessed value of all property listed for taxes in a district and may not have a maximum maturity period exceeding 40 years.

The other two management agencies under discussion (sewer authorities and the MES) are not authorized to issue general obligation bonds.

2.4.2 Special funds and revenue funding.

For a discussion of the revenue bonding powers of municipalities, see paragraph 2.4.1.

The Boards of sewer authorities[59] and the Board of Directors of the MES[60] are authorized to issue revenue bonds by resolution. Such bonds may not have a maximum maturity period exceeding 40 years. The consent of the constituent municipalities of the sewer authority is not required by statute. No consent of any state department or agency is required prior to the issuance of such bonds by the MES.[61]

In Allegheny and Dorchester counties and in Middletown in Fredrick County, the questions of issuing such bonds (by the sewer authority) must first be submitted to the voters within the geographical limits of the said authority.[62]

Sanitary districts have no revenue bonding authority, although they may retire general obligation bonds from revenues.

2.4.3 Other Methods of Financing.

Sewer authorities are authorized to accept temporary loan from municipalities.[63] Such loans must be repaid from proceeds of the first bond issue.

Sanitary districts are authorized to accept temporary loans, not to exceed $20,000.[64] These loans must be repaid, without interest, before construction starts. In addition, the governing body or bodies of the county or counties in which a sanitary district lies may advance up to $20,000 to such district.[65]

This advance must also be repaid before construction begins. Finally, sanitary districts are authorized to tax property located in their districts in order to pay principal and interest on bonds if funds, from all sources, are insufficient to pay off the principal and interest.[66]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Since the governing bodies of two or more municipalities are authorized to enter into contracts and agreements concerning the forming of a sewer authority, including the ". . .financing of sewerage facilities,"[67] the payment formula agreed upon by the parties should be acceptable as representing each party's appropriate share.

As noted in paragraph 2.3.1, sewer authorities and sanitary districts can assure, through a proper charging basis, that each category of user pay its appropriate share. This power should also be sufficient to assure that each participating community pay its appropriate share.

The formula for assessing charges by the MES as noted in paragraph 2.3.1, also applies to municipalities. This alone should satisfy the requirement of the Act. This formula is strengthened by a provision which states that if a municipality does not pay its bill within 60 days of the due date, then several state tax funds, normally allocated to such municipality can be directed and paid directly to the MES to the extent necessary to extinguish the debt.[68]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of the management agencies are explicitly empowered to refuse wastes from a municipality.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

The governing body of a municipality may require that no sewage drainage work ("hook-up") be done on any private property without the receipt of a permit from that body.[69] However,

it would be highly unlikely that a municipality would deny a hook-up for the reason that the municipality itself is not in compliance with an areawide plan unless there is an outside force imposing such restriction.

It is provided that "before any plumbing, waterworks or sewer construction is done in any building or upon any private property within any sanitary district, the person, firm, or corporation doing the same shall first obtain a permit from the Commission."[70] Whether a denial of such a permit could be based upon the failure of the municipality (in which the user resides) to comply with an areawide plan is unclear and undecided.

The two other management agencies (sewer authorities and the MES) are not explicitly authorized to deny hook-ups. It might be argued that such a power could be implied from the provisions that sewer authorities and, in some instances, the MES, act in a municipality's place by managing sewer facilities for that municipality and from the statutory provision that authorizes municipalities to deny hook-ups.[71] Even if such an implication is permissible, it would still have to be argued that a permit denial could be based on a municipality's failure to comply with an areawide plan. Such an argument becomes theoretically strained since, after sewer authorities or the MES have taken the place of the municipality, to deny further permits within a constituent municipality would be tantamount to denying a permit for one's own failure to comply with an areawide plan.

It would appear that enforcement agencies rather than treatment agencies are the appropriate agencies to effect a "moratorium" on new or additional "hook-ups." Thus, the DWR with its permit granting authority and other powers could impose a "moratorium" on new or additional "hook-ups."

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

If users do "hook-up" without a permit they are subject to fine and imprisonment.[72] If it is successfully argued that sewer authorities and the MES possess the permit issuing authority vested in municipalities,[73] the same penalties should follow if a user "hooks-up" without an authority or MES permit.

Criminal penalties and fines are also provided for a user "hooking-up" without a permit issued by a sanitary district.[74]

There appears to be no statutory basis for assessing penalties or surcharges against municipalities or subdivisions which do not comply with the areawide plan. Where agencies are authorized to charge on the basis of cost of treatment, surcharges could be imposed to the extent that non-compliance increases the cost of treatment. This could apply to communities as well as individual users following the reasoning set forth in paragraph 2.5.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

The governing body of a municipality is authorized to enter into contracts for the treatment of industrial wastes.[75] Such contract-making ability should enable the municipality to place conditions upon the acceptance of such wastes through pretreatment and effluent requirements.

Sewer authorities are authorized to compel industries from which it receives wastes "to treat such sewage or waste as shall be specified by the authority before discharging such sewage or waste into any sewerage system owned, operated or maintained by such authority."[76]

Sanitary districts may receive and treat industrial wastes.[77] Business entities must obtain a permit before they are allowed to use a district's sewer facilities.[78] In order to obtain and keep such a permit, the Commission must certify that there is (among other things) no "improper use of sewers." While it may be debatable whether this provision empowers Commissions to require pretreatment of industrial wastes, it would appear broad enough considering the fact that a treatment agency must be able to control the character of the effluent received if it is to protect its operation.

The MES is responsible for the purification of sewage from municipalities and persons[79] (with "persons" defined to include both individuals and business entities).[80] The MES "may exclude or require preconditioning of any waste that might otherwise be harmful to structures or purification processes or endanger the health or safety of workers."[81]

3.0 SUMMARY

Of the four management agencies -- municipalities, sewer authorities, sanitary districts and the MES -- the MES appears to be type of agency envisioned by the Act. The other

agencies are, however, in a position to comply with the Act with only minor revisions. The influence of the MES on the other management agencies can be quite strong. As an example, if the MES is called on to provide the management and treatment functions in an area, it can influence land use decisions through its planning authority as to location of the treatment works. The MES can also influence management agencies by designing and recommending construction of treatment works for the other agencies to implement.

3.1 Deficiencies.

Municipalities might be well advised to have broader grant language.

The "front footage" charge basis must be changed in order to be eligible for a grant.

The "front footage" charge will prevent proper recovery from industrial users.

4.0 BIBLIOGRAPHY

1. Haskell, E., Managing The Environment: Nine States Look for New Answers.

2. Jaffe, L., and L. Tribe, Environmental Protection (1971).

3. McKewen, T. D., Wholesaling Environmental Services, 6 Environmental Science and Technology 324 (April 1972).

FOOTNOTES

1. Md. Ann. Code art. 43, §388(1971).
2. Md. Ann. Code art. 43, §389(1971).
3. Md. Ann. Code art. 43, §397(1971).
4. Md. Ann. Code art. 43, §§3393, 397(1971).
5. Md. Ann. Code art. 43, §391(1971).
6. Md. Ann. Code art. 33B, §8(1971).
7. Md. Ann. Code art. 41, §206(d)(1971).
8. Md. Ann. Code art. 41, §206(A), (B)(1971).
9. Md. Ann. Code art. 96A, §25(i)(Supp. 1972).
10. Md. Ann. Code art. 96A, §25(l)(Supp. 1972).
11. Md. Ann. Code art. 96A, §26(a)(Supp. 1972).
12. Md. Ann. Code art. 96A, §28(a)(1)(Supp. 1972).
13. Md. Ann. Code art. 33B, §9(Supp. 1972).

14. Md. Ann. Code art. 96A, §28A(a)(Supp. 1972).
15. Md. Ann. Code art. 96A, §28A(b)(Supp. 1972).
16. Md. Ann. Code art. 96A, §25(b)(Supp. 1972).
17. Md. Ann. Code art. 33B, §3(a)(1971).
18. Md. Ann. Code art. 33B, §5(d)(Supp. 1972).
19. Md. Ann. Code art. 33B, §6(Supp. 1972).
20. "Municipality" is defined for the purposes of the Sanitary Facilities Bond Act as "any city or town incorporated under the laws of this state." Md. Ann. Code art. 43, §428(1971).
21. Md. Ann. Code art. 43, §409(1971).
22. Md. Ann. Code art. 43, §446(1971).
23. Md. Ann. Code art. 43, §646(1971).
24. Md. Ann. Code art. 43, §§451, 651(1971) respectively.
25. Md. Ann. Code art. 43, §§451, 651(1971) respectively.
26. See note 20.
27. Md. Ann. Code art. 43, §430(1971).
28. Md. Ann. Code art. 43, §428(a)(1971).
29. Sewer authorities, Md. Ann. Code art. 43, §450; sanitary districts, Md. Ann. Code art. 43, §650(1971).
30. Md. Ann. Code art. 43, §§445(l), 656(l)(1971).
31. Md. Ann. Code art. 43, §§445(g), 645(g)(1971).
32. Md. Ann. Code art. 33B, §4(g)(1971).
33. Md. Ann. Code art. 33B, §3(j)(1971).
34. Md. Ann. Code art. 43, §430(g)(1971).
35. Md. Ann. Code art. 43, §450(p)(1971).
36. Md. Ann. Code art. 43, §650(14)(1971).
37. Md. Ann. Code art. 33B, §4(p)(1971).
38. Municipalities, Md. Ann. Code art. 43, §416(1971); sewer authorities, Md. Ann. Code art. 43, §455(1971).
40. Md. Ann. Code art. 43, §657(1971).
41. Md. Ann. Code art. 43, §663(1971).
42. Md. Ann. Code art. 33B, §7(1971, Supp. 1972).
43. Md. Ann. Code art. 33B, §3(g)(Supp. 1972).
44. Md. Ann. Code art. 33B, §3(k)(Supp. 1972).
45. Md. Ann. Code art. 43, §413(Supp. 1972).
46. Md. Ann. Code art. 43, §455(1971).
47. Md. Ann. Code art. 43, §663(1971).
48. Md. Ann. Code art. 33B, §7(1971, Supp. 1972).
49. Md. Ann. Code art. 43, §430(b)(1971).
50. Md. Ann. Code art. 43, §413(1971).
51. Md. Ann. Code art. 43, §§455, 657(1971).
52. Md. Ann. Code art. 43, §411(1971).
53. Md. Ann. Code art. 43, §431(1971).
54. Id.
55. Md. Ann. Code art. 43, §435(a)(1971).
56. Md. Ann. Code art. 43, §435(b)(1971).

57. Md. Ann. Code art. 43, §431(1971).
58. Md. Ann. Code art. 43, §654(1971).
59. Md. Ann. Code art. 43, §452(a)(1971).
60. Md. Ann. Code art. 33B, §11(Supp. 1972).
61. Md. Ann. Code art. 33B, §12(e)(Supp. 1972).
62. Md. Ann. Code art. 43, §452(b)(1971).
63. Md. Ann. Code art. 43, §463(2)(d)(1971).
64. Md. Ann. Code art. 43, §650(16)(1971).
65. Md. Ann. Code art. 43, §652(c)(Supp. 1972).
66. Md. Ann. Code art. 43, §654(d)(1971).
67. Md. Ann. Code art. 43, §439(1971).
68. Md. Ann. Code art. 33B, §7(b)(1971).
69. Md. Ann. Code art. 43, §417(1971).
70. Md. Ann. Code art. 43, §660(1971).
71. Md. Ann. Code art. 43, §417(1971).
72. Md. Ann. Code art. 43, §417(1971).
73. Id.
74. Md. Ann. Code art. 43, §669(Supp. 1972).
75. Md. Ann. Code art. 43, §430(1971).
76. Md. Ann. Code art. 43, §455(c)(1971).
77. Md. Ann. Code art. 43, §645(g)(1971).
78. Md. Ann. Code art. 43, §660(1971).
79. Md. Ann. Code art. 33B, §5(k)(1971).
80. Md. Ann. Code art. 33B, §3(g)(Supp. 1972).
81. Md. Ann. Code art. 33B, §5(k)(1971).

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PENNSYLVANIA REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Regulatory and enforcement powers relating to water pollution control in the state of Pennsylvania reside within the Department of Environmental Resources.

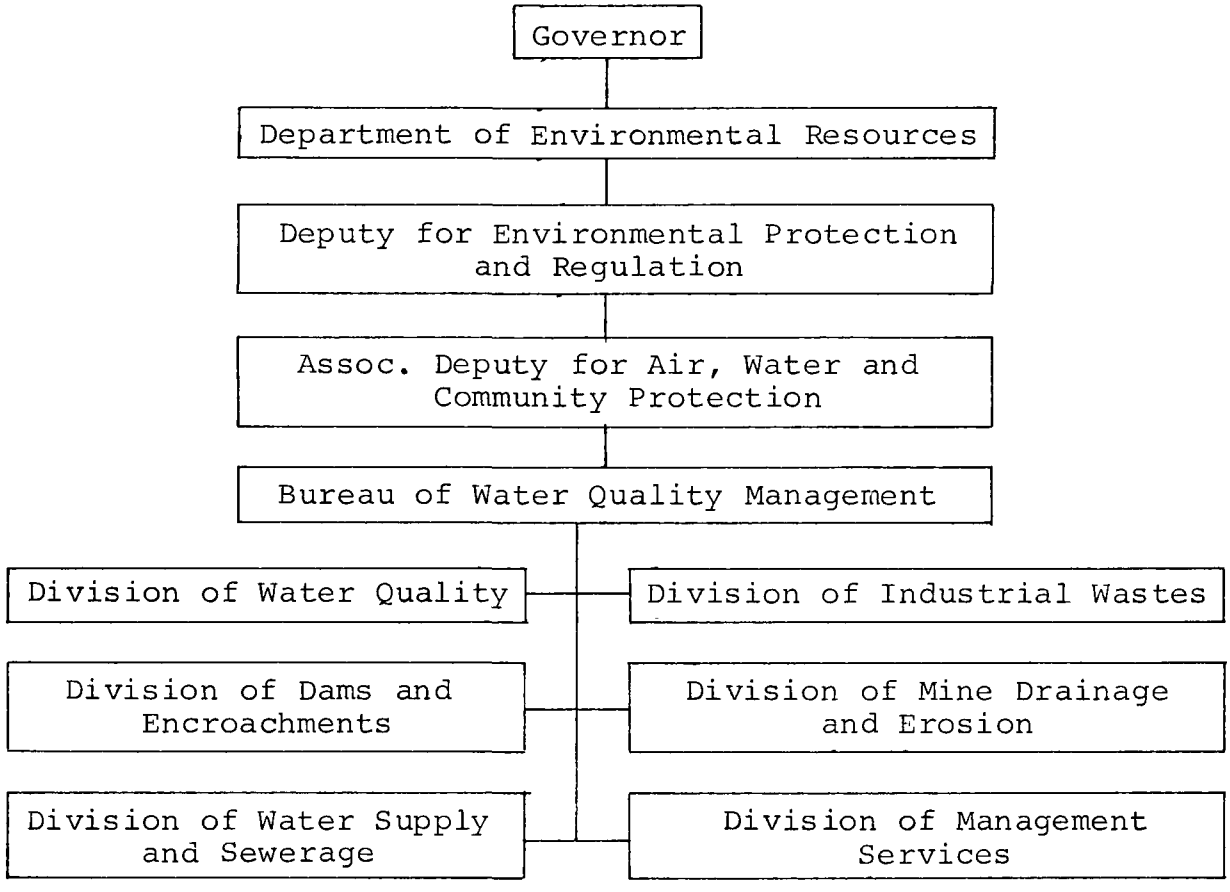
The establishment of the department was largely accomplished by reorganization; the department now possesses powers formerly belonging to such diverse agencies as the Department of Forests and Waters,[1] the Department of Mines and Mineral Industries,[2] the Oil and Gas Inspectors' Examining Board[3] and the Department of Health.[4]

With regard to water pollution control, the new department is empowered to: (1) adopt standards for construction and installation of sewage treatment plants,[5] (2) require submission of sewer system and waste treatment plans, which are then approved or disapproved;[6] (3) issue permits which are required for construction, modification, or installation of such plants;[7] (4) order a municipality to acquire, construct, repair, alter, complete, extend, or operate a sewer system and/or treatment facility and order municipalities to negotiate for joint systems or facilities;[8] (5) issue or deny permits to discharge sewage or industrial wastes;[9] (6) disburse state and federal grants subject to requirements which it lays down;[10] (7) conduct investigations[11] and require submission of information as to character and rate of flow of industrial wastes;[12] (8) review and pass upon applications for certification of sewage treatment plant operators;[13] (9) develop and implement comprehensive waste management and other water quality plans;[14] and (10) revoke permits and issue pollution abatement orders.[15]

The management portion of Pennsylvania's water pollution control programs resides within townships, municipalities, Municipal Authorities and counties. In accordance with the statutory

set-up, four classifications of cities will be analyzed: (1) cities of the first class; (2) cities of the second class A; (3) cities of the second class; and (4) cities of the third class (classification based on size and, in some cases, ordinances).[16] Other areas of interest are boroughs, incorporated towns and townships of the first and second class (such classification, again, based on population).[17] In addition, general municipal law will be referred to since such provisions apply to all of the above listed entities. Municipal Authorities may be organized by any municipality singly or two or more municipalities jointly[18] to carry out certain projects among which are the construction and operation of sewage treatment works.[19] In this context municipality means any county, city, town, borough or township.[20]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208 (c)(2)(C)].

First class cities are authorized to carry out the construction . . . maintenance, operation and repair of . . . [sewerage] structures.[21] Boroughs are given similar powers.[22]

Cities of the second class, second class A and third class have specific authority to construct treatment works.[23] Incorporated towns lack specific authority to construct such facilities; however, this authority might be implied from a statutory provision which grants incorporated towns which have constructed treatment works authority to charge for its use.[24] Cities of the second class, second class A, and third class, as well as incorporated towns lack specific authority to operate and maintain treatment works; however such authority might be implied from the statute granting these bodies authority to charge users of their respective sewage systems so as to meet operation and maintenance expenses.[25] Townships of the first[26] and second[27] class are specifically empowered to enter into contracts providing for the construction, maintenance and operation of sewer treatment works. Municipal Authorities have express authority to construct, operate and maintain treatment works.[28]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

None of the municipalities under consideration in this report possess specific statutory authority to accept and utilize grants. The power may be one reserved to municipalities by the home rule provisions of the state constitution and also may be implied from the State Department of Environmental Resources' power to disburse federal and state grants to municipalities.[29] From this it can be implied that municipalities can receive and use such grants.

The Act requires that the federal grants be used only for the purposes of the specific grant. The power of the Department of Natural Resources to "disburse" federal grants should, therefore, be administrative only and not construed as a power to divert the funds. In addition, the terms of the grant will provide that the funds cannot be diverted, and, the state in approving the grant application as complying with state law is bound thereby.

Municipal Authorities have express authority to accept grants from the federal government, the Commonwealth of Pennsylvania and any municipality, school district, corporation or other Municipal Authority.[30]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Municipalities under consideration and Municipal Authorities are empowered to impose and collect an annual charge for sewage treatment services.[31]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Since municipalities may assess annual charges on the basis of the cost attributable to the treatment of each user's waste,[32] they should have no trouble complying with the requirement of charging each category of user its proportionate share of treatment costs.

Charges imposed by Municipal Authorities must be at reasonable and uniform rates which are to be determined exclusively by the Authority.[33] This provision has been construed by a lower court so as to allow rates to be different for various classifications of users, so long as the classifications are reasonable and the rates are uniform within a given classification.[34] So construed this provison should encompass authority to charge on the basis of characteristics of effluent.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Municipalities are authorized to impose service charges to the extent necessary to cover both the operation and maintenance of the treatment works and amortization of any indebtedness which may be incurred in the construction or acquisition of such works.[35] Since this provision[36] also states that the charges shall not be limited to merely covering those above stated expenses,[37] municipalities should be sufficiently authorized to charge industry as required.

Municipal Authorities do not have express authority to recover these costs from industry. Such authority may be implied from the general authority to impose charges since these charges can be used to pay construction costs[38] and the rates can be different for different classifications of users.[39]

As to both municipalities and Municipal Authorities, the authority for industrial cost recovery can be implied from their authority to contract with industry for treatment.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

As will be noted hereinafter, all of the municipalities under consideration have bonding powers of some type.

2.4.1 General Obligation Funding.

All municipalities may issue general obligation bonds.[40] If issued by the local government authorities, without assent of the electors, they may not cause the municipal debt to exceed 250% of the borrowing base of the municipality.[41] However, if a majority of the electors do assent, the debt limitation does not apply.[42] In addition, general obligation bonds must mature within 40 years, or a period not to exceed the estimated usefulness of such property or improvement for which such bonds are issued.[43]

Municipal authorities may issue bonds[44] and pledge the full faith and credit of the authority to secure the bond issue;[45]

however this pledge may not include the full faith and credit of the Commonwealth or any political subdivision thereof.[46]

2.4.2 Special Funds and Revenue Funding.

All local government units are authorized to issue revenue bonds.[47] When such bonds are issued their maturity dates may not exceed 40 years or the estimated period of usefulness of the property or improvement for which such bonds shall be issued, whichever is earlier.[48]

Municipal Authorities may issue revenue bonds.[49]

2.4.3 Other Methods of Financing.

Municipalities can also issue tax anticipation notes,[50] as well as receive state funds from the Department of Environmental Resources.[51]

Municipal Authorities may receive funds from the municipalities the authority serves.[52]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

First class cities are empowered to divide a territory which will be served by a sewer system into sewer districts and, once such divisions have been made, requires that each district pay its proportionate share of the construction cost for such a system.[53] However, no provision specifically requires that each district (or community) pay its proportionate share of treatment costs. But such power may reasonably be implied from the authority to charge individual users proportionate rates.[54]

Since municipal authorities may charge for different catagories of users [see §2.3.1] they have implicit authority to assure that each participating community pay its fair share.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

No provision specifically authorizes municipalities or

Municipal Authorities to refuse a subdivision's or municipality's wastes. The Department of Environmental Resources does have authority in this regard, however, due to its permit issuance powers and its powers to protect the state's waters as described in Section 1.1.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

To a certain extent, municipalities possess the power to employ prospective measures to refuse the wastes of a subdivision or another municipality. All municipalities are authorized "to enact and enforce suitable ordinances to govern and regulate the construction [and] alteration . . . of all buildings . . . in order to promote the public health . . . ."[55] While no court appears to have passed on the issue, it might be argued that these provisions would enable a municipality to halt construction on new structures if the waste emitted therefrom would overburden the available treatment facilities.

Municipal authorities have authority "to determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service, including extensions thereof in the area served."[56] Such authority might encompass the power to deny new hook-ups to municipalities in violation of the areawide agreement.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

No management agency is expressly vested with any of these powers.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

There are no express statutory provisions which enable a municipality to contract with industry for its services. Accordingly, it would be difficult to place conditions on an industry's use of such services by using the contract method. The same objective, however, may be obtained on the state level. No industry may discharge its wastes into a municipal sewer system until it has complied with the rules and regulations of the Department of Environmental Resources.[57]

Municipal Authorities have express authority to treat industrial wastes.[58] There is no provision authorizing Authorities to establish pretreatment standards or ro refuse industrial wastes; however, such authority may be implied from the authority to accept such wastes. Furthermore, pretreatment of industrial wastes may be necessary according to the provisions of an industrial waste discharge permit.[59]

3.0 SUMMARY

Although Pennsylvania generally complies with the requirements of the Act, some revision of the laws concerning waste treatment management agencies would be helpful. The management agencies are lacking in one or more of the powers required under the Act, although state level agencies may supply some of these powers. The management-related powers of the municipalities should be coordinated and compiled in one statutory provision to avoid gaps and overlaps. Although the treatment agencies are local in scope, the Department of Environmental Resources by virtue of its powers to issue permits and to provide comprehensive waste planning can require local agencies to join in areawide plans and treatment.

3.1 Deficiencies

The following specific deficiencies exist in Pennsylvania, but these are currently offset by implied powers or the state level agencies providing such authority:

1. Several agencies lack express authority to operate and construct treatment facilities;

2. All municipal agencies lack express authority to accept and utilize grants;

3. There is no express power to recover industries' construction costs;

4. Municipal agencies lack express power to enforce a plan by "cutting off" municipalities or denying new "hook-ups" does not exist;

5. The municipal agencies lack express authority to accept industrial wastes and require pretreatment for them.

4.0 BIBLIOGRAPHY

1. Ackerman and Sawyer, The Uncertain Search for Environmental Policy: Scientific Factfinding and Rational Decisionmaking Along the Delaware River, 120 Penn. L. Rev. 419.

2. Bruch, George D., Environmental Pollution Control Laws in Pennsylvania: A Survey and Analysis, 16 Vill. L. Rev. 815 (1971).

3. Comment, Statutory Pollution Control in Pennsylvania, 16 Vill. L. Rev. 851 (1971).

4. Note, Pollution Control Under the Pennsylvania Clean Streams Law, 34 U. Pitt. L. Rev. 115 (1972).

FOOTNOTES

1. Pa. Stat. Ann. 71 §510-1(1) (Supp. 1973).
2. Pa. Stat. Ann. 71 §510-1(2) (Supp. 1973).
3. Pa. Stat. Ann. 71 §510-1(3) (Supp. 1973).
4. Pa. Stat. Ann. 71 §510-1(7) (Supp. 1973).
5. Pa. Stat. Ann. 35 §750.3 (Supp. 1972).
6. Pa. Stat. Ann. 35 §§750.5, 691.308 (Supp. 1973).
7. Pa. Stat. Ann. 35 §750.7 (Supp. 1973).
8. Pa. Stat. Ann. 35 §691.203 (Supp. 1973).
9. Pa. Stat. Ann. 35 §691.202, .307 (Supp. 1973).
10. Pa. Stat. Ann. 35 §750.3 (Supp. 1973).
11. Pa. Stat. Ann. 35 §691.305 (1964).
12. Pa. Stat. Ann. 35 §691.303 (1964).
13. Pa. Stat. Ann. 63 §1004 (Supp. 1973).
14. Pa. Stat. Ann. 35 §691.5(b)(2) (Supp. 1973).
15. Pa. Stat. Ann. 35 §691.610 (Supp. 1973).
16. Pa. Stat. Ann. 53 §101 (Supp. 1973).
17. Pa. Stat. Ann. 53 §§65201 (1957).
18. Pa. Stat. Ann. 53 §303 (1957).
19. Pa. Stat. Ann. 53 §306(A) (Supp. 1973).
20. Pa. Stat. Ann. 53 §302 (1957).
21. Pa. Stat. Ann. 53 §12263 (1957).
22. Pa. Stat. Ann. 53 §47001, 47041(C)(2) (1966).
23. Pa. Stat. Ann. 53 §§22561 and 3[illegible]206, (1957); 53 §102 (Supp. 1973).
24. Pa. Stat. Ann. 53 §2231 (Supp. 1973).
25. Pa. Stat. Ann. 53 §2232 (Supp. 1073).

26. Pa. Stat. Ann. 53 §57403 (1957).
27. Pa. Stat. Ann. 53 §66504 (1957).
28. Pa. Stat. Ann. 53 §306(A) (Supp. 1973).
29. Pa. Stat. Ann. 35 §750.3 (Supp. 1973); Pa. Con. Art. 9 §2.
30. Pa. Stat. Ann. 53 §306(B)(k) (1957).
31. Pa. Stat. Ann. 53 §2231 (Supp. 1973).
32. Pa. Stat. Ann. 53 §2232 (Supp. 1973).
33. Pa. Stat. Ann. 53 §306 (B)(h) (Supp. 1973).
34. Vener v. Municipal Sewer and Water Authority of Cranberry Tp., 5 Pa. Commonwealth 123, 289 A2d. 506, 1972.
35. Pa. Stat. Ann. 53 §2232 (Supp. 1972).
36. Pa. Stat. Ann. 53 §2232 (Supp. 1972).
37. It might be argued that, without the "shall not be limited" provision, municipalities could not charge for the federal share of construction costs, since the charges would then be limited to covering operating expenses and indebtedness (which the federal share is not).
38. Pa. Stat. Ann. 53 §306(B)(h) (Supp. 1973).
39. See notes 33 and 34 and associated text.
40. Pa. Stat. Ann. 53 §11-105 (Supp. 1973).
41. Pa. Stat. Ann. 53 §11-202 (Supp. 1973).
42. Pa. Stat. Ann. 53 §11-201 (Supp. 1973).
43. Pa. Stat. Ann. 53 §11-602 (Supp. 1973).
44. Pa. Stat. Ann. 53 §306(B)(i) (Supp. 1973).
45. Pa. Stat. Ann. 53 §307(B) (1957).
46. Id.
47. Pa. Stat. Ann. 53 §11-105 (Supp. 1973).
48. Pa. Stat. Ann. 53 §11-602 (Supp. 1973).
49. Pa. Stat. Ann. 53 §306(B)(i) (Supp. 1973); 53 §307(C) (1957).
50. Pa. Stat. Ann. 53 §11-501 (Supp. 1973).
51. Pa. Stat. Ann. 35 §750.3 (Supp. 1973).
52. Pa. Stat. Ann. 53 §2295 (1957).
53. Pa. Stat. Ann. 53 §14491 (1957).
54. See 2.3.1 Text supra.
55. Pa. Stat. Ann. 53 §§4101, 39130 (Supp. 1973).
56. Pa. Stat. Ann. 53 §306(B)(h) (Supp. 1973).
57. Pa. Stat. Ann. 35 §691.307 (Supp. 1973).
58. Pa. Stat. Ann. 53 §306(A) (Supp. 1973).
59. Pa. Stat. Ann. 35 §691.307 (Supp. 1973).

PLEASE REFER TO FORMAT
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VIRGINIA REPORT
(1973)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Virginia's water pollution control laws were revised in 1973. The new State Water Resources Law was designed to protect clean waters, prevent new pollution and reduce existing pollution.[1] Administration and supervision of the new laws are delegated to the Department of Conservation, Development and Natural Resources and the Water Resources Board.[2]

Duties of the Water Resources Board include:

1. Establishment of water quality standards;

2. Adoption of regulations as it deems necessary to enforce the general water quality programs of Virginia;

3. Establishment of policies and programs for effective area-wide water quality management;

4. Establishment of requirements pertaining to treatment of sewage and industrial wastes.[3]

The Commissioner of the Department of Conservation, Development and Natural Resources has authority:

1. To exercise general supervision over water quality in the state and enforce all laws pertaining thereto;

2. To conduct studies, investigations and research in order to discover methods of maintaining water quality;

3. To issue, revoke or amend certificates for the discharge of sewage and industrial wastes;

4. To make inspections to insure compliance with rulings, certificates and orders;

5. To issue special orders to owners to (a) cease and desist from polluting, (b) to construct approved facilities, (c) to comply with the terms of certificates, and (d) to comply with water quality standards and policies;

6. To administer programs of financial assistance for planning, constructing and operating water quality control facilities.[4]

The new law also provides for strict regulation of industrial wastes and sewage discharges. All industrial establishments must provide facilities approved by the Commissioner for treatment of industrial wastes.[5] The Commissioner reviews applications for discharge permits and either grants such certificates or notifies the owner as to corrective measures required.[6] Similarly, all sewage systems and treatment works are under the Commissioner's supervision.[7] Owners of sewage treatment works are required to furnish the Commissioner information regarding quantities and character of sewage discharged and other pertinent information. Plans and specifications for all treatment works serving over 400 persons must be approved by the Commissioner before such system can be operated, constructed or expanded.[8]

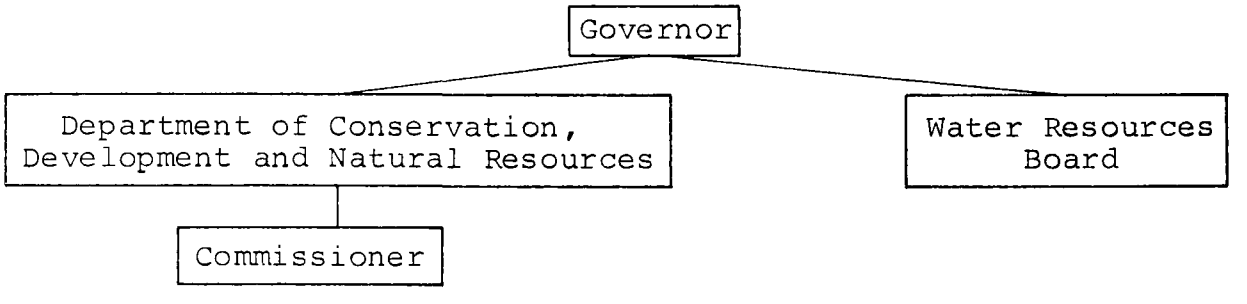
Enforcement of these laws is obtainable by injunction as well as fines up to $5000 per day.[9] The treatment management portion of Virginia's water pollution control program resides in sewer authorities[10] and sanitary districts.[11]

Upon petition of 50 qualified voters of the proposed sanitary district, any circuit court of a county may create such a district.[12] It would appear that the boundaries of a sanitary district may not include more than one county.[13]

The governing body of a political subdivision may, by ordinance or resolution create a sewer authority, and similarly, the governing bodies of two or more political subdivisions may create a sewer authority through concurrent ordinances or resolutions.[14] After enacting such ordinance or resolution, the governing body must hold a hearing[15] and if, at the hearing, there is substantial opposition to the creation of the authority, a referendum must be held.[16]

1.2 Schematic Diagram of Existing Agencies

Virginia Water Pollution Control Administration



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

The analysis of existing treatment agencies covers those two agencies noted in paragraph 1.1: sewer authorities and sanitary districts.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Sewer authorities are empowered to acquire, purchase, construct, operate and maintain sewage disposal systems.[17] Such systems, by definition, include works . . . installed for the purpose of treating sewage and industrial wastes.[18] Sanitary districts are authorized to construct, operate and maintain sewerage systems.[19] While such systems are not defined, the terminology used should be broad enough to encompass treatment facilities.

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Only sanitary districts are specifically authorized to receive and utilize grants.[20] However, as noted in paragraph 1.1, the Department of Conservation, Development and Natural Resources administers financial assistance programs.[21] It might be inferred from this that these two agencies are able to receive funds. From the working of the Department's authority on this point, it may also be inferred that they perform no more than an administrative function in doling out the grants; it (the Department) is not authorized to withhold a grant from the designated agency. Thus, the requirements of paragraph 2.2 should be satisfied.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

As will be noted in the following paragraphs, both management agencies may charge for the sewer services they provide.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

Sewer authorities are empowered to charge for services furnished

by or for the use of any sewage disposal facility.[22] The charges must be sufficient to (1) pay the cost of operating and maintaining the sewer system, (2) pay the principal and interest on revenue bonds, and (3) provide a margin of safety for making such payments.[23] Such charges may be based upon any . . . factor affecting the use of the facilities furnished.[24] These guidelines for charging should insure that each user will pay his appropriate share of operation and maintenance costs.

In contrast to the complete guidelines set forth above, sanitary districts are simply authorized to fix and prescribe the rates of charge for the use of any such system or systems, and to provide for the collection of such charges.[25] In the absence of any judicially narrowed interpretation, it is that the general charging powers of sanitary districts will enable them to comply with the requirements of this paragraph.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Sewer authorities may charge manufacturing and industrial plants for sewer services provided.[26] As noted in paragraph 2.3.1, such charges must be sufficient to cover, inter alia, principal and interest on revenue bonds.[27] Thus, it may be that authorities cannot charge industries for the federal portion (i.e., the portion not covered by revenue bonding) of construction costs. However, it is to be noted that authorities are required to charge enough so as to cover operation and maintenance costs and the principal and interest on bonds; this fact does not necessarily imply that authorities would not be permitted to cover other sewer system costs such as the contractual obligation in the federal grant requiring recovery from industrial users.

While sanitary districts are not specifically allowed to charge for the treatment of industrial waste (or even to receive such waste in the first place), the fact that districts are allowed to charge for the use of any [sewer] systems[28] and that users are not statutorily classified should be sufficiently broad to authorize such charges. Because of the very broad charging powers conferred upon districts,[29] the requirement of this paragraph should be satisfied.

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

As will be noted below, both management agencies have bonding powers. While there is no express authority to incur short-term indebtedness, it can be implied from the bonding authority that different types of short-term indebtedness may be incurred.

2.4.1 General Obligation Funding.

The governing body of any county in which a sanitary district lies may issue general obligation bonds to an amount in the aggregate not exceeding 18 percent of the assessed value of all real estate in the district subject to local taxation.[30] Such bonds must mature within 34 years of their issuance.[31] The issuance of such bonds must be approved by a majority of qualified voters in a sanitary district who vote on the question.[32] Such election may be ordered by a circuit court upon petition by a majority of the county's governing body or by 50 qualified voters residing in the district.[33]

Sewer authorities have no express power to issue general obligation bonds.

2.4.2 Special Funds and Revenue Funding.

If the order for election, noted in paragraph 2.4.1, states the maximum amount of bonds to be issued and that such bonds are to be issued for a specific undertaking from which the sanitary district may derive revenue, then the bonds of the sanitary district issued pursuant to the election are considered revenue bonds.[34] The 34 year maturity limitation still applies.[35]

Sewer authorities are also authorized to provide by resolution for the issuance of revenue bonds.[36] Such bonds must mature within 40 years of their issuance.[37]

Neither sewer authorities nor sanitary districts are specifically required to obtain legislative approval before issuing such bonds.

2.4.3 Other Methods of Financing.

The governing body of a county may also levy and collect an annual tax upon all property subject to taxation in a sanitary district to pay, in whole or part, the cost of constructing, operating and maintaining a sewer system.[38]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

No provisions concerning the management agencies touch on this subject. However, as was noted in paragraph 2.3.1, sanitary districts and sewer authorities can assure, through a proper waste treatment charging basis, that each user pays his appropriate share. This power should, in turn, be sufficient to assure that each participating community pay its appropriate share. In addition, when several municipalities join together to form a common sewer authority as described in section 1.1, the contractual agreement could reasonably provide for apportionment of the costs between the municipalities.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of An Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Neither sanitary districts nor sewer authorities are empowered to refuse municipal wastes.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Both sanitary districts and sewer authorities are authorized to enter into contracts with municipalities for provision of sewer services.[39] This could give the agencies sufficient power to deny new "hook-ups" in non-complying municipalities subject to the contract.

There are a few instances in Virginia where such a moratorium has been upheld by the courts. Most recently, a 1973 Fairfax County Circuit Court decision affirmed the county's right to ban the issuance of any further building permits until new sewage treatment facilities are constructed to handle the output from new construction.[40] In 1970, the predecessor of the Department of Conservation, Development and Natural Resources, the Water Control Board, issued a moratorium on additional sewer connections for portions of Fairfax County, and was upheld by the court.[41]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

The same contractual power noted in paragraph 2.6.1 may also enable such agencies to assess penalties against noncomplying municipalities.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Sanitary districts and sewer authorities are authorized to enter contracts with corporations and businesses for the purpose of furnishing sewer services.[42] This contractual power should permit the agencies to accept industrial wastes and require pretreatment of them.

3.0 SUMMARY

From the standpoint of this survey, both management agencies should be equally adaptable to the requirements of the Act.

3.1 Deficiencies

The major shortcoming of the Virginia provisions is that sewer authorities are not specifically authorized to receive grants. While this power might be inferred, the inclusion of such a power in the provisions governing this agency would clear up any uncertainties. The other two requirements that are not expressly provided -- authority to refuse a noncomplying municipality's waste and authority to insure that each community pays its fair share -- are shortcomings common to management agencies in many states. Express legislative authority in this area would be helpful.

4.0 BIBLIOGRAPHY

1. Brion, Denis J., Virginia Natural Resources Law and the New Virginia Wetlands Act, 30 Wash. and Lee L. Rev. 19 (1973).

2. Howard, A.E. Dick, State Constitutions and the Environment, 58 Vir. L. Rev. 193 (1972).

3. Miri, Joseph R., Some Problems of Water Resource Management in Virginia: A Preliminary Examination, 13 Wm. and Mary Law Rev. 388 (1971).

4. Notes, Private Remedies To Abate Water Pollution in Virginia and New Theories in Environmental Law, 13 Wm. and Mary L. Rev. 477 (1971).

5. Notes, Public Regulation of Water Quality in Virginia, 13 Wm. and Mary L. Rev. 424 (1971).

6. Walker and Cox, Virginia Water Policy: The Imprecise Mandate, 14 Wm. and Mary L. Rev. 312 (1972).

FOOTNOTES

1. Va. Code Ann. §62.1 - 44.45 et seq. (Supp. 1973).
2. Va. Code Ann. §62.1 - 44.50(Supp. 1973).
3. Va. Code Ann. §62.1 - 44.51(Supp. 1973).
4. Va. Code Ann. §62.1 - 44.52(Supp. 1973).
5. Va. Code Ann. §62.1 - 44.54(Supp. 1973).
6. Id.
7. Va. Code Ann. §62.1 - 44.56(Supp. 1973).
8. Va. Code Ann. §62.1 - 44.57(Supp. 1973).
9. Va. Code Ann. §§62.1 - 44.61, -70(Supp. 1973).
10. Va. Code Ann. §15.1 - 1239 et seq. (1973).
11. Va. Code Ann. §21-113 et seq. (1960), as amended, Va. Code Ann. §21 - 113(Supp. 1973).
12. Va. Code Ann. §21 - 113(Supp. 1973).
13. Va. Code Ann. §21 - 117(1960) provides that one or more districts of one county may be merged; no mention is made of merger of districts situated in two or more counties.
14. Va. Code Ann. §15.1 - 1241(1973).
15. Va. Code Ann. §15.1 - 1243(1973).
16. Va. Code Ann. §15.1 - 1244(1973).
17. Va. Code Ann. §15.1 - 1250(f)(1973).
18. Va. Code Ann. §15.1 - 1240(j)(1973).
19. Va. Code Ann. §21 - 118(1)(1960).
20. Va. Code Ann. §21 - 118.4(c)(Supp. 1973).
21. See text accompanying note 4, supra.
22. Va. Code Ann. §15.1 - 1260(1973).
23. Id.
24. Id.
25. Va. Code Ann. §§21 - 118(5)(1960), 21 - 118.4(e)(Supp. 1973).
26. Va. Code Ann. §15.1 - 1260(1973).
27. See text accompanying note 23, supra.
28. Va. Code Ann. §21 - 118(5)(1960).
29. See text accompanying note 25, supra.
30. Va. Code Ann. §21 - 122(Supp. 1973).
31. Va. Code Ann. §21 - 130(1960).
32. Va. Code Ann. §21 - 125(1960).

33. Va. Code Ann. §21 - 123(1960).
34. Va. Code Ann. §21 - 122(Supp. 1973).
35. Va. Code Ann. §21 - 130(1960).
36. Va. Code Ann. §15.1 - 1252(1973).
37. Id.
38. Va. Code Ann. §21 - 118.6(Supp. 1973).
39. Va. Code Ann. §§21 - 118(8)(1960); 15.1 - 1269(b), (c)(1973).
40. See Environment Reporter, July 1973, p. 434.
41. Virginia Water Board v. Supervisors of Fairfax County, Chancery no. 31671(July 28, 1970), 1 Environmental Reporter Decisions 1482(1970).
42. Va. Code Ann. §§21 - 118(8)(1960); 15.1 - 1250(j)(1973).

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WEST VIRGINIA REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Regulatory and enforcement powers relating to water pollution control in the state of West Virginia reside within the Water Resources Board and the Department of Natural Resources (Division of Water Resources).[1] The State Department of Health (Division of Sanitary Engineering) is involved to a lesser extent in pollution control.[2]

The Water Resources Board is empowered to: (1) establish rules and regulations concerning the prevention, control and abatement of water pollution and the imposition of water quality standard;[3] and (2) handle appeals from decisions and orders of the Division of Water Resources.[4]

The Division of Water Resources is empowered to: (1) conduct investigations and inspections of public or private property;[5] (2) require the submission of data, by any person or industry which discharges sewage or waste, concerning the kind, characteristics, amount and rate of flow of any discharge;[5] (3) receive funds and grants and disburse them solely for the purpose for which they were contributed;[7] (4) develop programs for the control and reduction of water pollution;[8] (5) approve or disapprove applications for permits which are required in order to (among other things); (a) discharge waste or sewage into state waters, (b) construct, alter or operate a disposal system, (c) increase the discharge of waste or sewage above that level already allowed by permit, (d) open, operate or abandon a mine, quarry or preparation plant, and (e) operate a disposal well for injection into the underground strata;[9] and (6) issue pollution abatement orders.[10]

The Division of Sanitary Engineering is responsible for approving or disapproving applications for permits which relate solely to sewage (permits being required in order to conduct the activity listed in part (5) of above paragraph).[11]

Public Service Districts (PSD), Sanitary Districts (SD), municipal corporations and county courts are responsible for the treatment

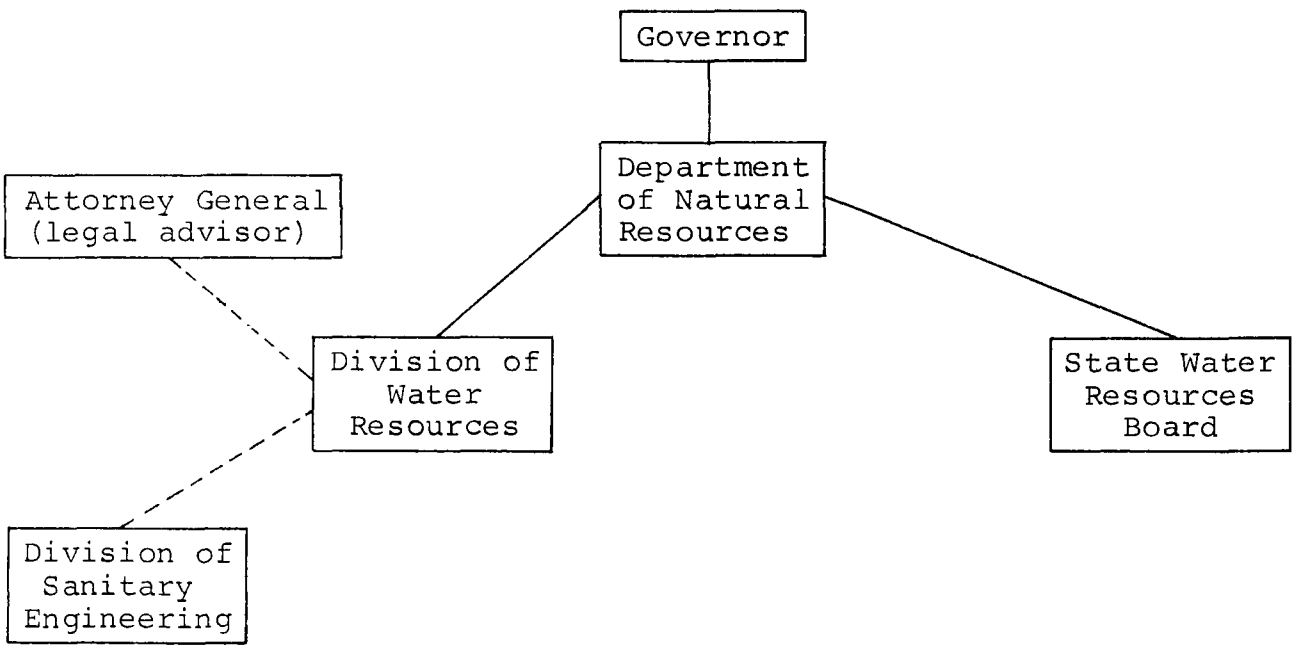
management portion of West Virginia's water pollution control programs.

PSD may be created by county courts.[12] However, if a city, incorporated town or other municipal corporation is to be included within the boundaries, the governing body of such city, etc., must first adopt a resolution consenting thereto.[13] A PSD may lie in one or more counties.[14]

Special elections are required for the creation, addition or termination of sanitary districts. A SD may also lie in one or more counties, the only requirement being that all of its territory is contiguous.[15]

1.2 Schematic Diagram of Existing Agencies

West Virginia Water Pollution Control Administration



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

County Courts and the governing boards of PSDs, municipalities and SDs are authorized to construct, operate and maintain waste treatment works.[16]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

PSDs, municipalities and SDs are authorized to accept grants and procure loans or temporary advances from any federal agency for the purpose of waste treatment plant construction.[17] County Courts are not specifically authorized to accept any governmental grants.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Each of the four above mentioned entities are authorized to assess charges for waste treatment services.[18] Additionally, sanitary districts may assess a direct annual tax for sewer construction purposes.[19]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Charges may be determined on any basis or classification which the governing board of a PSD may determine to be fair and reasonable including the nature and extent of services provided.[20] Such language is sufficiently broad to permit compliance with this paragraph. There is no statutory provision which indicates how municipal corporations or sanitary districts are to compute sewer charges for each user. County Courts, however, are required to assess charges on the basis of front footage.[21] Such a method of computation makes compliance with this paragraph doubtful since front footage would not necessarily correspond to the amount and degree of waste treated.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

PSDs are authorized to charge for the services and facilities it furnishes.[22] Charges must be sufficient to cover operation and maintenance costs, and principal and interest on revenue bonds.[23] However, charges are not specifically required to cover construction costs. This poses a problem since this paragraph requires that industries pay their share of the federal portion of construction costs; the revenue bonds cover only the state portion of construction costs. Therefore, there seems to be no express statutory authority whereby PSDs can recoup this "federal portion." This same deficiency exists for municipal corporations[24] and sanitary districts.[25] While counties may recover construction costs with service charges,[26] the charging basis (as noted in paragraph 2.3.1) is inadequate for the purposes of this paragraph.[27]

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

As will be noted in paragraphs 2.4.1 and 2.4.2, all management agencies under consideration are authorized to incur some sort of bonded indebtedness.

2.4.1 General Obligation Funding.

Municipalities and county courts may issue general obligation bonds to finance treatment plant construction.[28] A municipality's debt may not exceed five percent of the taxable property therein[29] while the county court's ceiling is two and one-half percent.[30] In either case the bond issue has to be approved by three-fifths of all votes cast in the required election.[31] SDs and PSDs have no authority to issue general obligation bonds.

2.4.2 Special Funds and Revenue Funding.

PSDs may issue revenue bonds having a maximum maturity date of 40 years.[32] No election or prior authorization is required for issuing such bonds. Municipalities and SDs are given similar powers except no limitation on the maturity period is placed on the bonds which they issue.[33] County courts have no authority to issue revenue bonds.

2.4.3 Other Methods of Financing.

As noted in paragraph 2.2, municipalities, PSDs and SDs are authorized to accept loans (apparently long-term) and temporary advanced (to be paid out of the proceeds of a bond issuance).[34] In addition, all agencies are authorized to issue general obligation and revenue bonds for the purpose of financing remedial actions necessary to comply with orders of the Division of Water Resources.[35]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

No statutory provision specifically states that each participating community must contribute its proportionate share of treatment costs. It is also to be noted that only PSDs are empowered to charge each user his proportionate share[36] (which, in turn, might insure that each community would pay its proportionate share).

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of the management agencies are specifically empowered to refuse municipal waste once they have begun accepting them.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Although no management agency possesses "moratorium" powers, the Division of Water Resources or the Division of Sanitary Engineering, by denying a permit, can prevent sewage from being discharged from any building or establishment.[37] The Division is required to issue a permit if none of its rules or regulations will thereby be violated.[38] It is conceivable that such rules and regulations would contain water quality standards. If this is the case, the Division could refuse a permit if, had the permit been allowed, the discharger would have caused water quality standards to be violated.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

No provision authorized any state or local agency to assess penalties against municipalities. However, municipalities are subject to criminal penalties by the state for violation of pollution control regulations.[39]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

A PSD may require sewer line "hook-up" whenever the sewage from a house, dwelling or building will flow by gravity to a sewage line.[40] If "buildings" were interpreted so as to include industrial establishments, this provision would illustrate that, at the very least, any PSD is empowered to accept industrial wastes. However, such an interpretation has yet to be made.

Municipalities and sanitary districts are authorized to enter contracts with any industry for the purpose of providing waste treatment services to such industries.[41]

In as much as "firms or corporations" are allowed to petition for the construction of sewer lines which would abut their property,[42] it could be inferred that county courts may also accept industrial wastes.

In none of the above mentioned sections is the management agency specifically authorized to require pretreatment before it accepts the wastes. The contracts with industry could, of course, contain these provisions. None of the management agencies reviewed in paragraph 2.0 are authorized to conduct investigations or inspections. On the other hand, any person who is discharging wastes into state waters must first procure a permit from the Division of Water Resources.[43] A detailed plan of maintenance and operation must be submitted with the application for permit.[44] However, this provision also states that:

> . . . where the activity is an integral part of a secret operating process, the required information shall be limited solely to data which will show the kind, characteristics, amount and rate of flow of . . . industrial waste.[45]

3.0 SUMMARY

West Virginia can comply with many provisions of the Act. However, the local treatment agencies lack express statutory authority in the areas noted below. New legislation granting the necessary powers would cure these defects.

3.1 Deficiencies

The management agencies discussed in paragraph 2.0 lack the following express statutory powers required by the federal act:

1. Counties have no authority to accept grants for waste treatment management;

2. PSDs, municipalities and sanitary districts have no way of assessing charges sufficient to cover that part of construction costs not covered by revenue bonds. (Thereby preventing them from recovering the "federal share" of construction costs.);

3. counties are only authorized to charge on a front footage basis. This charging method does not adequately reflect treatment costs;

4. except when required by remedial orders, agencies other than PSDs and SDs are not authorized to issue general obligation bonds, and counties may not issue revenue bonds to finance sewage plant construction. However, all of the management agencies have some sort of bonding power;

5. none of the local management agencies possesses moratorium powers; but the Division of Water Resources or the Division of Sanitary Engineering may have such authority;

6. none of the management agencies can compel industries to pretreat their discharges except by contract or city ordinance.

4.0 BIBLIOGRAPHY

None.

FOOTNOTES

1. W. Va. Code §20-5A-1 et seq. (1970)
2. W. Va. Code §20-5A-7.
3. W. Va. Code §20-5A-3a.
4. W. Va. Code §20-5A-15 (Supp. 1972).
5. W. Va. Code §20-5A-8.
6. W. Va. Code §20-5A-3(a)(12).
7. W. Va. Code §20-5A-4.
8. W. Va. Code §20-5A-3.
9. W. Va. Code §20-5A-5(7).
10. W. Va. Code §20-5A-10.
11. W. Va. Code §20-5A-7.
12. W. Va. Code §16-13A-2 (1972).
13. Id.
14. W. Va. Code §16-13A-1.
15. W. Va. Code §16-12-13.
16. W. Va. Code §§7-1-3a, 16-13A-1, 16-13-1, 16-12-5, respectively.
17. W. Va. Code §16-13-24, 16-13-22a.
18. See paragraphs 2.3.1, 2.3.2, infra.
19. W. Va. Code §16-12-10.
20. W. Va. Code §16-13A-9.
21. W. Va. Code §7-1-3a (1969).
22. W. Va. Code §16-13A-9.
23. Id.
24. W. Va. Code §16-13-16.
25. W. Va. Code §16-12-10.
26. W. Va. Code §7-1-3a.
27. Charges are based on a "front-footage" computation instead of the "costs of treatment works reasonably attributed to treatment of such wastes."
28. W. Va. Code §13-1-1.
29. W. Va. Code §13-1-3.
30. Id.
31. W. Va. Code §13-1-14.
32. W. Va. Code §16-13A-13.
33. W. Va. Code §16-13-10.
34. See notes 17 and accompanying text, supra.
35. W. Va. Code §20-5A-12.
36. See text accompanying note 20, supra.
37. W. Va. Code §§20-5A(a)(1), 20-5A-6.
38. W. Va. Code §20-5A-7(c).
39. W. Va. Code §20-5A-19.
40. W. Va. Code §16-13A-9.
41. W. Va. Code §16-13-22b.
42. W. Va. Code §7-1-3a.
43. W. Va. Code §20-5A-6.
44. Id.
45. Id.

REGION IV

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT

ALABAMA REPORT
(1971)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Control over water pollution in Alabama is vested in the Water Improvement Commission.[1] This agency was the subject of new legislation in 1971 and presently has authority:

1. To conduct studies and investigations and develop programs intended to result in the reduction of water pollution;

2. To require persons discharging pollutants to maintain records, make reports, install monitoring equipment and sample pollution;

3. To establish standards of water quality;

4. To issue, revoke, modify or deny permits for the discharge of wastes, and the operation of disposal systems;

5. And to enter into agreements with the federal government or other states.[2]

Violation of water pollution control laws or any rules and regulations of the Commission can result in a civil penalty up to $10,000 per day,[3] civil damages resulting from the violator's actions[4] and additional amounts necessary to restock the waters with fish and wildlife.[5]

The Commission is designated as the state water pollution control agency in Alabama for all purposes of the Federal Water Pollution Control Act, as amended, and is authorized to take all actions necessary and appropriate to secure the benefits of the Act.[6]

Some authority over water pollution control is also held by the State Board of Health which regulates sewage collection, treatment and disposal.[7]

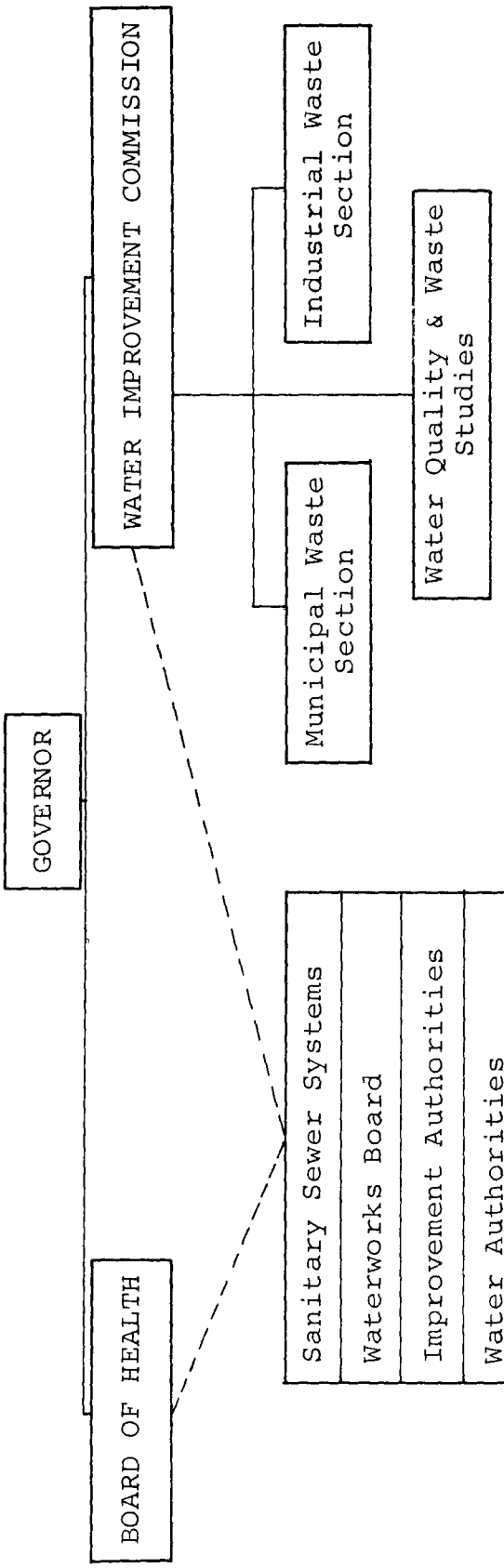
Alabama's waste treatment agencies vary in geographical size from those which operate within a municipality to those of

inter-county size. Prior to 1965 local agencies predominated. These are divided into four types.

First, municipalities and "any area in the State of Alabama containing as many as two hundred and fifty qualified electors" may incorporate improvement authorities.[8] These authorities may be concerned with other services as well as sewage treatment -- as many as seven public services can be included along with sewage treatment services.[9] Second, city councils may create boards of water and sewer commissioners.[10] Third, sanitary sewer systems can be created in any municipality.[11] Fourth, these systems may be controlled by the municipality's water works board if this arrangement is found desirable.[12] Thus, sanitary sewer systems, boards of water and sewer commissioners, water works boards or improvement authorities may control local sewage management.

Recent legislation has provided for more regionalized management. Environmental improvement authorities may now be formed whenever environmental conditions in one or more mediums (air, water, etc.) are "in excess of normal acceptable tolerance as established or determined by the appropriate regulatory body."[13] These authorities vary from municipal to inter-county size. Water authorities[14] were also created by legislation passed with the act creating environmental improvement authorities. These water authorities also may have as many as two other functions.[15]

1.2 Schematic Diagram of Existing Agencies



ALABAMA WASTE WATER MANAGEMENT SCHEME

2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208 (c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208 (c)(2)(C)].

Each authority is granted power to regulate, locate, modify and construct waste water treatment works.[16] The larger regional agencies, however, do not have control over all of the sewage facilities within their region since the smaller agencies are permitted to retain their autonomy.

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes [§208(c)(2)(D)].

Boards of water and sewer commissioners have specific statutory approval to receive federal funds.[17] Likewise, both environmental improvement authorities and water authorities are granted the power to receive funds from the United States.[18] No mention is made of this power in either the improvement authorities act or the sanitary sewer systems act, but there is no express prohibition.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

With the exception of environmental improvement authorities, all sewage treatment authorities are statutorily authorized to impose rates and charges on their customers.[19] The environmental improvement authorities act does not mention how the revenues, discussed elsewhere in the act,[20] are to be collected.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Boards of water and sewer commissioners and sanitary sewer systems are both empowered to assess rates, fees and charges which insure the payment of each user's appropriate share of the available services. Boards of water and sewer commissioners' fees

must be just and equitable.[21] They are able to surcharge industrial users for any waste treatment which poses an unreasonable burden upon their system.[22] Likewise, sanitary sewer system charges must be "uniform for the same type, class, and amount of use of . . . the sewer system,"[23] and their statutes include the same provision concerning industrial waste as do the above mentioned boards.[24]

Water authorities are empowered to impose "reasonable rates" on those who are serviced by them.[25] The statute does not include a provision which permits increasing the cost of handling less manageable pollutants. This should not act as a bar, however, since such charges would not be determined unreasonable.

Both improvement and environmental improvement authorities have inadequate statutory guidelines. While improvement authorities are granted the right to collect revenue, there is no requirement that the costs be equitably shared.[26] Similarly, environmental improvement authorities have no express provisions which authorize the collection of charges. Instead, there is only a section which mentions revenue from the use of the facilities without explaining its source.[27]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

No treatment agency has a specific provision permitting them to charge industrial users for their share of the construction costs. While some agencies do provide for applying charges to operating expenses,[28] there is no basis on which to imply that repayment of a portion of the federal grant could be considered an operating expense. Alabama does, however, permit the use of Industrial Development Bonds.[29] These bonds enable a municipality to construct sites and physical plants for industry by using municipal funds; the debt created is then paid back by imposing rents on the industry. Obviously a similar plan of recovery of construction costs is contemplated by §204(b)(1)(B) of the Act. This statutory provision could provide a precedent for permitting recovery from industrial users.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208 (c)(2)(F)].

All authorities may issue bonds to provide funds for construction.

However, powers do vary among the several agencies. All bonds issued are subject to a percentage limitation under the Alabama Constitution according to the size of the issuing political body.[30]

2.4.1 General Obligation Funding.

Only sanitary sewer authorities may issue ten or fifteen year general obligations bonds.[31]

Cities and towns with less than six thousand inhabitants are limited to issuing such bonds secured by the land and sewer system as well as the revenues received.[32] These bonds are not general obligation bonds.

2.4.2 Special Funds and Revenue Funding.

Forty-year revenue bonds may be issued by boards of water and sewer commissioners, improvement authorities, water authorities and by environmental improvement authorities.[33] These bonds are subject to repayment solely out of the new facility's revenues.[34]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

There is no provision for insuring proportional payment by member communities. Boards of water and sewer commissioners, sanitary sewer systems and water authorities, however, do have implied authority since their charges must be reasonable or uniform.[35]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

There is no mention of regulating communities discharges other than those mentioned in paragraph 2.3.1.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

No statute could be construed to grant a "moratorium" power

to any of the authorities. There is, however, no statute denying the power to refuse new "hook-ups" and, presumably, that power could be attained through an agency's regulations in order to protect the treatment works from overloading and thereby preventing the discharge of inadequately treated sewage.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

There are no other sanctions specifically provided by statute, but agencies might be able to establish penalties and surcharges as protective devices. In addition, the Water Improvement Commission can invoke the penalties discussed in paragraph 1.1.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208 (c)(2)(I)].

Only boards of water and sewer commissioners and sanitary sewer systems are specifically granted power to deal with industrial waste.[36] This power should reasonably be included in the 1965 provisions for water authorities.[37]

3.0 SUMMARY

Alabama's waste water management is adequate in most respects. However, certain chages, noted below, are advisable to eliminate uncertainties as to the authorities' legal ability to comply with requirements of the Act. It appears that improvement authorities and environmental improvement authorities need the most statutory attention.

3.1 Deficiencies

1. Re 2.2. The fact that some agencies are granted power to receive grants from any source (including federal) and others are not makes the omission more serious when determining an agency's legal capacity to accept funds. There is, however, no apparent reason why improvements authorities or sanitary sewer districts cannot accept such funds.

2. Re 2.3, 2.3.1. Environmental improvement authorities and improvement authorities should have legislation which either requires or authorizes them to impose just and equitable charges.

3. Re 2.3.2. Legislation is advisable to permit the agencies to impose charges on industrial users to recover industry's share of the costs of construction. This could be patterned after the industrial development bonds which require industry to repay.

4. Re 2.5. No express authority exists for any agency to comply with the provision of the Act.

5. Re 2.6, 2.6.1, 2.6.2. Communities' discharges should be covered by disciplinary statutes to insure adequate implementation of the plan. If an agency or authority other than the treatment agency presently has such power to regulate and penalize, such agency or authority should be assigned this function in the areawide plan. This would overcome the problem, although remedial legislation authorizing the waste treatment management to have the same power would appear to promote efficiency in enforcement.

6. Re 2.7. All systems have implied authority to accept industrial waste. However, only three agencies are presently statutorily authorized to do this.

4.0 BIBLIOGRAPHY

1. Ala. Water Improvement Comm., Water Pollution Control - 12th Biennial Progress Report (1971).

2. N. Hines, Public Regulation of Water quality in the United States (1971).

3. Institute of Law & Govt., U. of Ga., Water Law and Policy in the Southeast (1962).

4. L. Chermak, The Law of Revenue Bonds (1954).

5. Cohen, Water Law in Alabama - A Comparative Survey, 24 Ala. L. Rev. 453 (1972).

6. Comment, Consciousness of Streams: The 1971 Alabama Water Pollution Control Act, 24 Ala. L. Rev. 737 (1972).

FOOTNOTES

1. Ala. Code Ann. tit. 22 §140(12d) (Supp. 1971).
2. Ala. Code Ann. tit. 22 §140(12d)(a), (c), (g), (j), (k) (Supp. 1971).

3. Ala. Code Ann. tit. 22, §140(12d)(o) (Supp. 1971).
4. Ala. Code Ann. tit. 22, §140(12d)(p) (Supp. 1971).
5. Ala. Code Ann. tit. 22, §140(12d)(g) (Supp. 1971).
6. Ala. Code Ann. tit. 22, §140(12g) (Supp. 1971).
7. Ala. Code Ann. tit. 22, §140(14)-(18) (Supp. 1971).
8. Ala. Code Ann. tit. 50, §18 (1959).
9. Ala. Code Ann. tit. 50, §17 (1971).
10. Ala. Code Ann. tit. 37, §402(31) (1959).
11. Ala. Code Ann. tit. 37, §601 et seq. (1959).
12. Ala. Code Ann. tit. 37, §646(1) (1959).
13. Ala. Code Ann. tit. 8, §273 (1971).
14. Ala. Code Ann. tit. 50, §78 (1971). It should be noted that water authorities apparently are regarded as being created in line with sanitary sewer systems. See "sewer system," defined at Ala. Code Ann. tit. 50, §78 (1972). The powers of sanitary sewer systems, therefore, should be the same as water authorities except for those provisions which conflict.
15. Ala. Code Ann. tit. 50, §§80, 81 (1971).
16. Ala. Code Ann. tit. 8, §277 (1971); Ala. Code Ann. tit. 37, §§402(31), 601 (1959); Ala. Code Ann. tit. 50, §§40, 84 (1971).
17. Ala. Code Ann. tit. 37, §402(31)(m) (1959).
18. Ala. Code Ann. tit. 8, §277(18) (1971); Ala. Code Ann. tit. 50, §84(20) (1971).
19. Ala. Code Ann. tit. 37, §§402(36), 646(4) (1959); Ala. Code Ann. tit. 50, §§41, 85 (1971).
20. Ala. Code Ann. tit. 8, §278 (1971).
21. Ala. Code Ann. tit. 37, §402(36) (1959).
22. Id.
23. Ala. Code Ann. tit. 37, §646(4) (1959).
24. Id.
25. Ala. Code Ann. tit. 50, §84 (1971). See also, note 12 supra.
26. Ala. Code Ann. tit. 50, §41 (1971).
27. Ala. Code Ann. tit. 8, §278 (1971).
28. See, e.g., Ala. Code Ann. tit. 37, §402(36) (1956).
29. Ala. Code Ann. tit. 37, §815 et seq. (note esp. §822) (1971).
30. Ala. Const. art. 11, §§224, 225; Towns of less than 6,000 - 8 percent of the assessed value of the property therein; towns of over 6,000 - 7 percent; counties - 3.5 percent.
31. Ala. Code Ann. tit. 37, §635 (1959).
32. Ala. Code Ann. tit. 37, §638 (1959).
33. Ala. Code Ann. tit. 8, §278 (1971); Ala. Code Ann. tit. 37, §402(34) (1959); Ala. Code Ann. tit. 50, §§86, 44 (1971).
34. Town of Opp. v. Donaldson, 161 So. 332 (1935).

35. See §2.3.1.
36. See notes 31, 24 supra.
37. See note 14 supra.

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

FLORIDA REPORT
(1972)

1.0 OVERVIEW

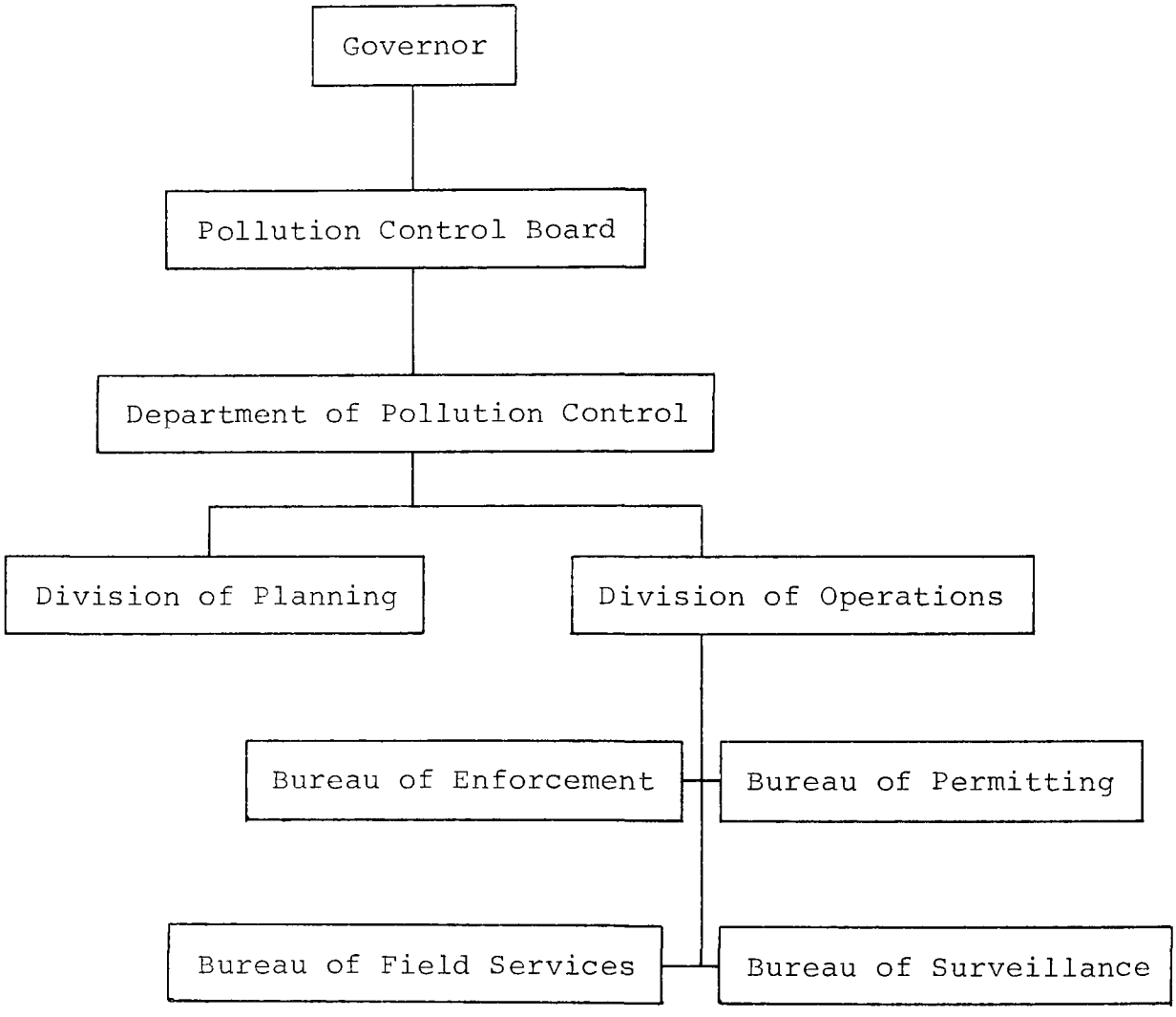
1.1 Description of Existing Agencies

Florida's Department of Pollution Control (the Department) sets water quality standards and has the task of enforcing those standards.[1] The operation, maintenance, construction, expansion or modification of sanitation facilities must be authorized by the issuance of a permit by the Department.[2]

Sewage disposal systems are permitted at both the county and municipal levels.[3] Sewer mains, intercepting sewers and disposal plants are all maintained by these systems.

Counties may be separated into smaller sewer districts for any unincorporated area.[4] These districts may be made either upon the board of county commissioners' own motion, or, after the request of a popular petition, upon a majority vote of the proposed district's voters.[5]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by any Areawide Plan. [§208(c)(2)(C)].

Sewage disposal systems may be built by any county, district, or municipality. These systems are also operated and maintained by these political entities.[6]

2.2 Authority to Accept and Utilize Grants, or Other Funds from any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Counties, districts, and municipalities may "receive and accept from any federal agency grants."[7]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

County and municipal sewer agencies are empowered to raise revenues from sewage charges.[8] These rates must be just and equitable and may be based on (1) quantity of water used, (2) number of sewer connections, (3) number and kind of plumbing fixtures, (4) average number of persons using facilities or (5) any other factor affecting the facilities.[9]

2.3.1 Each Category of User Will Pay its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

The requirement that the charge be just and equitable should assure that all users can and will be charged their appropriate shares. Also, industrial users may be required to pay a surcharge over and above the normal charge should the effluent place an unreasonable burden upon the sewage disposal system.[10]

2.3.2 Full Recovery Will Be Had fro: the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

User charges will eventually pay for the bond financed portion of the sewage disposal system's cost.[11] While no provision

provides for any additional recoupment, no specific provision could prevent this. Moreover, a contractual obligation to repay could be handled by special provisions between the contracting parties -- i.e., the treatment agency and the industries involved.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

In Phoenix vs. Kolodziejski, a provision of Arizona's constitution was declared unconstitutional by the United States Supreme Court for the reason that it required a majority vote of freeholders (with no vote requirement for other eligible voters) to validate any government project which required an expenditure.[12] Article 7, §12, of Florida's Constitution is nearly identical to the section struck down by the Supreme Court in Phoenix. However, even if the Florida clause is unconstitutional, it is highly likely that only that part dealing with the freeholders vote would be invalidated, leaving the vote requirement in effect.[13]

Presently three types of bonds exist for financing sewage disposal projects.

2.4.1 General Obligation Funding.

General obligation bonds exceeding twelve months maturity may be issued by both counties and municipalities whenever a majority of the area's freeholders approve them.[14] These bonds are secured by the ad valorem taxes of the particular political area.[15] Counties and municipalities may issue voter-approved bonds under their respective sewage disposal statutes to build approved facilities.[16]

2.4.2 Special Funds and Revenue Funding.

Revenue bonds also may be issued to finance sewage disposal systems.[17] These bonds may be adopted by ordinance or resolution of the governing body without voter approval.[18]

2.4.3 Other Methods of Financing.

One more financing method may be used by municipalities and counties: Article 7 §14, of the Florida Constitution provides for issuing special state bonds to finance pollution control and abatement facilities. These bonds are secured by the state's full faith and credit and enable interested political entities to finance their ventures through a lease-purchase agreement. Payment for the rentals comes from the facilities' revenues.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Since charges must be "just and equitable" (as noted in 2.3 supra), it is reasonable to imply that participating communities can be required to pay their proportionate shares of treatment costs.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality of Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan under §202 Applicable to Such Area. [§208(c)(2)(H)].

While there is no provision permitting such an action, it is reasonable to assume that non-complying wastes may be excluded by the sewer authorities. Certainly any wastes which would interfere with the treatment processes must be excluded. (See 2.7 infra in reference to industrial wastes.) Moreover, since rules may be made by municipal systems, the exclusion of non-complying wastes may be maintained under an adopted rule instead of by statute.[19] It is, however, unclear that the right to refuse could be enforced against a municipality as compared with individual (private) users.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

Since the maintenance, expansion or modification of sanitation facilities depends upon Department of Pollution Control permits,[20] new or additional hook-ups can be refused at the state level. Such a result could also be maintained by the local or regional authorities either by delegation or by having the department refuse a permit until it is found regionally acceptable.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Either contracts (between the participating communities) or regulations could provide an authority with the power to impose fines, surcharges or other similar sanctions. At present no statutory authority exists for such actions.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

County, district, and municipal sewage disposal systems are provided with the statutory capability to accept industrial waste.[21] While the definition of "sewage waste" for county sewage disposal systems does not include industrial waste, industrial waste is specifically mentioned in later sections and, thus, can be accepted.[22]

No particular provision of the statutes covering sewage disposal systems requires pretreatment by industrial users whenever it is found necessary. This should, however, be considered implicit in a more general statute covering municipal systems which provides that the governing bodies may make such rules as are necessary for the system's efficient operation.[23]

District sewer systems are specifically empowered to "prescribe methods of pretreatment of industrial wastes" and "to refuse to accept such industrial wastes when not sufficiently pretreated. . ."[24]

3.0 SUMMARY

Present Florida statutory frameworks for its sewage disposal systems is fairly consistent with the Act's requirements.

3.1 Deficiencies

Re 2.6, 2.6.2. Specific authorization to refuse to receive wastes from a municipality or subdivision may be required. At present it appears that such a limitation has never been attempted. Additional sanctions might be provided to replace or to be an addition to that mentioned above.

4.0 BIBLIOGRAPHY

1. Office of the Clerk of the House of Representatives, Guide to Agencies of the Florida Executive Department (1971).

2. The Florida Handbook 1971-1972 (1971).

3. Environmental Protection Agency 1972 Compendium State Water Pollution Control Agencies with Regulatory/Police-Making Responsibility (1971).

4. Fischer, "Florida Courts and Water Pollution: A Floating Crap Game?" 2 Environmental L. 189 (1971).

5. Slade, "Is This Election Necessary?" 44 Fla. Bar J. 461 (1970).

6. Water and Waste Treatment Facilities, East Central Florida Regional Planning Council (1965).

7. Planning Legislation, East Central Florida Regional Planning Council (1965).

FOOTNOTES

1. Fla. Stat. Ann. §§403.061, 403.121 (Supp. 1972).
2. Fla. Stat. Ann. §403.087(1) (Supp. 1972).
3. Fla. Stat. Ann. §153.01 et seq. (1972), 184.01 et seq. (1966), (Supp. 1972).
4. Fla. Stat. Ann. §153.50 et seq. (1972).
5. Fla. Stat. Ann. §§153.53(1), (2) (1972).
6. Fla. Stat. Ann. §§153.03(1), 153.52(3) (1972); 184.03(1) (1966).
7. Fla. Stat. Ann. §§153.03(4), 153.62(17) (1972); 184.03 (10) (1966).
8. Fla. Stat. Ann. §§153.11, 153.64 (1972); 184.09 (1966).
9. Fla. Stat. Ann. §§153.11(1)(c), 153.64(2) (1972); 184.09 (1)(b) (1966).
10. Fla. Stat. Ann. §§153.11(1)(e) (1972), 184.09(1) (d) (1966).
11. Fla. Stat. Ann. §§153.11(1)(b), 153.64(1) (1972); 184.09(1)(a) (1966).
12. 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d. 523 (1970).
13. See discussion in Slade, "Is This Election Necessary?" 44 Fla. Bar J. 461,462 (1970).
14. Fla. Const. Art. 7, §12(a).
15. Fla. Const. Art. 7, §12.
16. Fla. Stat. Ann. §§153.08, 153.68 (1972); 184.07 (1966).
17. Fla. Stat. Ann. §§153.09, 153.63 (1972); 184.08 (1966).
18. State vs. City of St. Petersburg, 61 So. 2d, 416 (Sup. Ct. of Fla. Div. B 1952); State vs. City of Miami 157 Fla. 726, 27 So. 2d, 118 (1946).
19. Fla. Stat. Ann. §184.03(6) (1966).
20. Fla. Stat. Ann. §403.087(1) (Supp. 1972).
21. See 2.3.1.
22. Fla. Stat. Ann. §§153.11(1)(e), 153.02(13) (1972).
23. Fla. Stat. Ann. §184.03(6) (1966).
24. Fla. Stat. Ann. §153.62(12) (1972).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

GEORGIA REPORT

(1972)

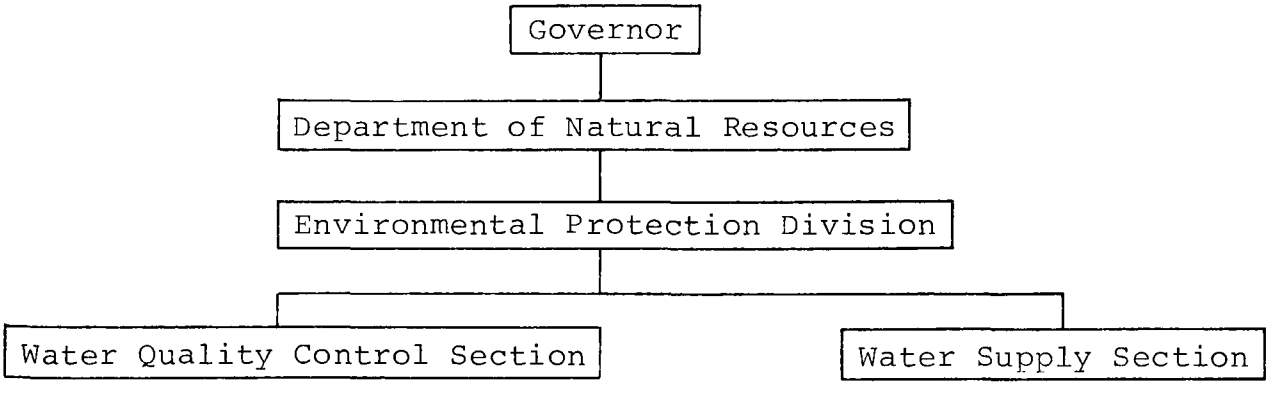
1.0 OVERVIEW

1.1 Description of Existing Agencies

Georgia has very little statutory law specifically covering sewage treatment matters. Indeed, all statutes dealing with sewage treatment are subsumed under more general categories. Thus, "municipalities," which include counties, school districts, cities, towns and other state and local authorities may finance revenue-producing undertakings among which may be found "systems, plants (etc.) . . . used in connection with the collection, treatment and disposal of sewage, waste and storm water."[1] This appears to be the only statutory authority for such "municipalities" to collect and treat sewage, except cities and towns are given certain more specific powers.

While little definitive legislation exists on local or regional powers, there has been some recent environmental legislation dealing with sewage treatment matters. The Georgia Water Quality Control Act[2] now gives the Department of Natural Resources regulatory powers over sewage disposal.[3] This agency also sets standards and acts as the standard enforcement agency.[4]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Specific authority exists for cities and towns "to acquire . . . to construct, to reconstruct, to improve, to better, and to extend any . . . sewage system . . . [and] to operate and maintain any such systems . . ."[5] Other local units under the general heading of "municipalities" have similar powers to operate, maintain and construct sewage treatment and disposal systems.[6]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

There is no express statutory authority enabling local agencies to accept grants from all sources. All local agencies, however, are authorized to purchase systems or acquire systems "by gift."[7] From this it could be implied that adequate authority exists for these agencies to accept and utilize federal grants. In addition, certain municipalities may receive grants of state funds for the purpose of constructing or improving capital outlay items, and all local agencies may be granted state funds for water pollution control projects as noted in paragraph 2.4.3.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Cities and towns are granted authority "to prescribe, revise, and collect rates, fees, tolls or charges for the services . . . furnished."[8] A similar provision is available for counties and other "municipalities."[9]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

While there is no express provision either preventing or

requiring the proportionate charging of categories of users, this could be implied from the general authority to charge.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

No specific provision exists on this matter. However, facilities containing waste treatment plants may be built by a town or city and then leased or sold to industry.[10] Since this is permissible, recoupment of construction costs from industrial users of municipal plants is probable.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

All municipalities[11] may finance sewage projects by issuing bonds in anticipation of the collection of revenues.[12]

2.4.1 General Obligation Funding.

Counties, municipal corporations and other political subdivisions of Georgia may not incur debt in excess of one-fifth of one percent of the assessed value of all of the taxable property therein without the majority vote of those voting qualified voters.[13] Furthermore, no debt may be incurred over seven percent of the taxable property's assessed value.[14]

2.4.2 Special Funds and Revenue Funding.

Forty-year revenue bonds may be issued by any municipality.[15] Municipalities are statutorily authorized to issue these bonds, secured by only the revenue from the financed works, whenever the governing body adopts a resolution for issuing these bonds by a majority vote.

2.4.3 Other Methods of Financing.

Certain municipalities may receive grants from the state for the purpose of "purchasing, constructing, improving, maintaining and repairing capital outlay items."[16] In addition, the State of Georgia may make grants to all local agencies to assist them in construction of water pollution control projects.[17]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

No provision exists which would either deny or guarantee each participating community that it would pay no more than its proportionate share.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

No statutory provision exists on this matter and, due to the serious impact such action would have on a community's welfare, it probably would not be permitted absent such approval.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

No provision exists which would either permit or prevent a municipality from denying hook-ups, although the Department of Natural Resources may enjoin and restrain any actual or potential discharges or other practices which may violate pollution control laws.[18]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

The Department of Natural Resources may enforce its orders by fines up to $500 for each day of violation and by injunctions.[19] The local agencies, however, lack express authority for such sanctions.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

No provision provides for the refusal or treatment of industrial wastes at the local level. However, this power may be reasonably implied from the definition of the term "sewage" used by the Department of Natural Resources, which definition includes discharges from industrial establishments.[20]

3.0 SUMMARY

There is a lack of express statutory authority for many of the requirements. These deficiencies might be troublesome for Georgia's wastewater management funding. Legislation in the areas noted below would be most helpful.

3.1 Deficiencies

The deficiencies in Georgia concern the lack of express authority to meet various requirements of the Act. In some cases the necessary powers can be implied to exist, in others it can not.

For example, the power to accept and utilize grants may be reasonably implied to exist, but an express grant of authority would make this more certain. A complete lack of authority to charge proportionate rates based on the nature of the effluent or to refuse to accept wastes from noncomplying municipalities is apparent here as well. This deficiency is also true of the power to charge communities proportionate rates. These are areas where the necessary powers may not be established by implication. Legislation would be required to grant the authority needed in these deficient areas, and it would also be best to change those powers which are now only implied to being expressly delegated.

4.0 BIBLIOGRAPHY

1. Comment, Georgia's Environmental Law: A Survey, 23 Mercer L. Rev. 633 (1972).

2. Hirsch, Kenneth L., On Buying Clean Water -- Reflections on the Georgia Water Pollution Controls, 23 Mercer L. Rev. 603 (1972).

3. Howard, R.S., Pure Water for Georgia: A Report on the State's Progress, Georgia Municipal Journal, November (1965).

FOOTNOTES

1. Ga. Code Ann. §87-802(3)(ii) (1971).
2. Ga. Code Ann. §17-501 et seq. (1971).
3. Ga. Code Ann. §17-511 (Supp. 1972).

4. Ga. Code Ann. §§17-505(b)(6), (10)(1971).
5. Ga. Code Ann. §69-314(1967).
6. Ga. Code Ann. §87-803(a),(b)(1971).
7. Ga. Code Ann. §§87-803(a)(1971), §69-314(1967).
8. Ga. Code Ann. §69-314(1967).
9. Ga. Code Ann. §87-803(c)(1971).
10. Ga. Code Ann. §69-1501(e)(Supp. 1972).
11. Ga. Code Ann. §87-802(11)(b)(1971) defines "municipalities" as "any school district, county, city, town . . . and State and local public authorities having corporate powers . . . "

12. Ga. Code Ann. §87-802(3)(ii)(1967).
13. Ga. Constitution §2-6001.
14. Id.
15. Ga. Code Ann. §87-805 (1971).
16. Ga. Code Ann. §69-1301 et seq. (1967).
17. Ga. Code Ann. §17-524 (1971).
18. Ga. Code Ann. §17-521 (1971).
19. Ga. Code Ann. §§17-521.2 (Supp. 1972), 17-521 (1971).
20. Ga. Code Ann. §17-503(g)(1971).

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KENTUCKY REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Kentucky's water pollution control laws were expanded and modernized effective January 1, 1973. The former Water Pollution Control Commission under the Department of Health was superceded by a new agency called the Department of Environmental Protection.[1] Headed by a Commissioner of Environmental Protection appointed by the governor, the DEP is responsible for safeguarding the waters of the state from pollution, preventing new pollution, and abating existing pollution.[2] More specifically, the DEP handles the broad functions of planning, setting standards, regulating, and enforcing an anti-pollution program.[3]

The DEP is assisted by the Environmental Quality Control Commission, consisting of seven members appointed by the governor.[4] This commission serves as an advisory committee to the commissioner and the governor, and may make recommendations to the DEP.[5]

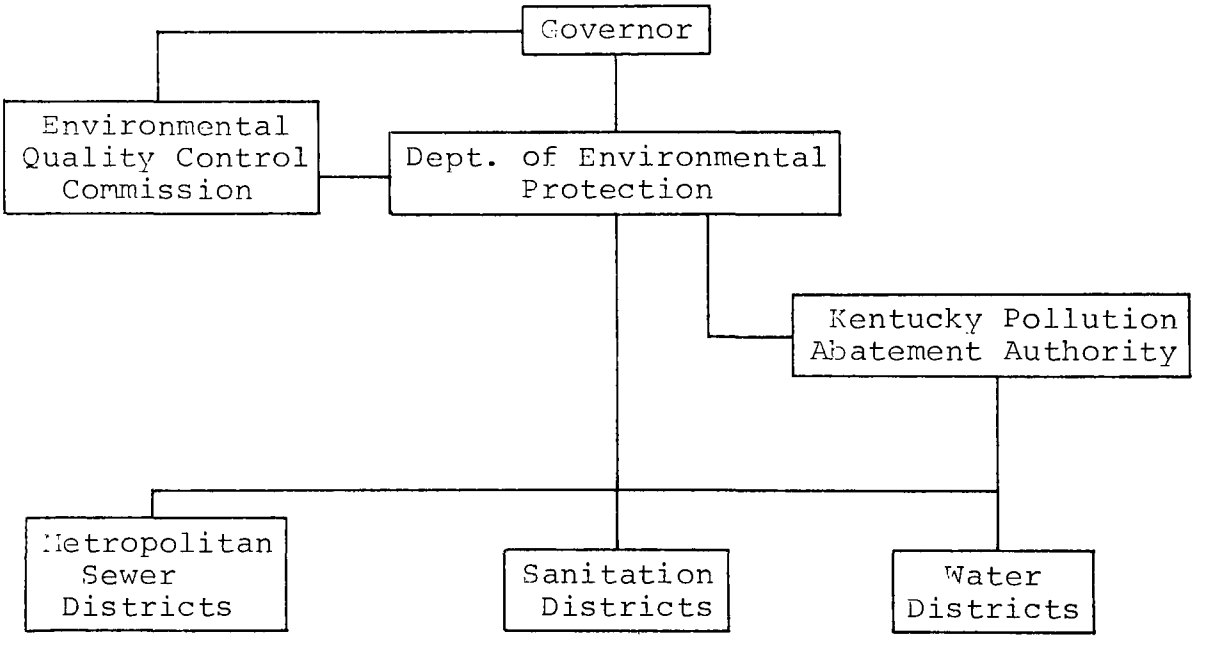
Another agency was created by the 1972 legislature for the purpose of giving state financial assistance to local agencies so as to make the agencies eligible for more federal grant funds.[6] This Kentucky Pollution Abatement Authority is attached to the DEP.[7] Functions of the authority include making state grants to local agencies in such a way as to maximize the federal funds received,[8] receiving and accepting grants to be held and applied to local agencies for only those purposes for which given,[9] and to regulate the state grant funding process including issuing and rejecting state grants.[10]

The legislature has provided that no person or entity whatsoever shall discharge into the waters sewage, industrial wastes, or other wastes which shall contribute to the pollution of the waters in contravention of the standards adopted by the DEP or its rules, regulations, and orders.[11] Violation of this statute can result in orders abating such activities,[12] civil penalties,[13] injunction,[14] or imprisonment.[15]

At the local level, the functions of construction, operation, and maintenance of disposal and treatment works are handled

by Metropolitan Sewer Districts, Sanitation Districts, and to a lesser extent Water Districts. Metropolitan Sewer Districts are permitted in and around first or second class cities and their counties.[16] These districts have express authority over operation and construction of treatment works.[17] Sanitation Districts may consist of a county, part of a county, or several counties.[18] The board of directors draws up a comprehensive plan for the district which is submitted to the DEP for approval.[19] Construction and operation functions are also found here.[20] Water Districts may be within a county or extend into adjoining counties.[21] Their primary purpose is furnishing water to the citizens of the district. However, they can also "acquire, develop, maintain, and operate" sewage disposal systems within their district.[22]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All local management agencies in Kentucky have express authority to operate,[23] construct,[24] and contract for construction[25] as required by this provision. The contracting power is subject to procedures which must be followed, but is not restricted or limited.

In addition, all local districts can accept sewage and provide service for areas outside their jurisdiction.[26]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

The DEP is expressly authorized to accept and administer grants or other funds or gifts from public or private agencies including the federal government for the purpose of carrying out the functions of the department.[27]

Likewise, the main grant management agency, the Kentucky Pollution Abatement Authority, can accept grants for, or in aid of, any waste water project.[28] Such grants must be held, used, and applied only for the purposes for which they are made.[29]

All local management agencies have statutory authority to "make application for, and to receive, federal grants in aid of eligible projects in accordance with the provisions of any federal laws now in effect, or in effect in the future."[30]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All those management agencies which have the authority to operate and construct treatment works can establish rates and charges for their services.[31]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

There is both express and implied authority for two of the agencies to establish their rates based on the characteristics of the effluent of various categories of users. The rates for Metropolitan Sewer Districts may be based on volume of water used, number and kind of plumbing fixtures connected to the user, number of persons served by the facilities, or any other fair and reasonable basis. In addition there can be a surcharge for heavy industrial wastes or other excessive wastes.[32]

In Sanitation Districts, the rates must be "reasonable," taking into consideration the cost of the works, cost of operation and maintenance, and cost of retiring bonds. The statute also provides that the same rates shall apply to all users of the same class.[33] From this, the necessary authority can be implied.

However, in Water Districts there is neither express authority to meet this provision, nor implied power from a reasonable rates clause. The statute merely provides that the district can "establish water rates."[34] This may not be a serious defect though, since the primary function of the Water Districts is to furnish water, not sewage treatment.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the local agencies has the express statutory power to provide for this. Such power might be implied from their authority to compute rates and charges in such a way as to pay off debts, meet contractual obligations, and amortize bonds.[35]

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

The authority for short-term indebtedness can be implied from the powers to contract which all local agencies possess.[36] Also, Sanitation Districts can borrow money for preliminary expenses at any rate less than 6%. These "negotiable warrants" are secured by a pledge of the preliminary tax authorized by statute.[37]

2.4.1 General Obligation Funding.

None of the local agencies has express power to issue general obligation bonds. The Kentucky Pollution Abatement Authority does possess this power, providing the bonds are approved by the voters of the state.[38] In addition, a tax must be levied sufficient to discharge the debt within thirty years.[39]

2.4.2 Special Funds and Revenue Funding.

Revenue bonds may be issued by all local management agencies.[40] Such bonds may be left outstanding for up to 40 years for Metropolitan Sewer Districts and Sanitation Districts, and up to 50 years for Water Districts. The limit on interest is 5% for Metropolitan Sewer Districts, and 6 1/2% for Sanitation Districts and Water Districts.[41] There is no limit on the amount of these bonds.

2.4.3 Other Methods of Financing.

The Kentucky Pollution Abatement Authority can enter into assistance agreements with local agencies to provide funds for eligible projects. Such grants must be repaid to the authority, and the local agency may impose a service charge on users in order to produce amounts sufficient for this purpose.[42]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

There is no express authority for any of the local management agencies to assure compliance with this provision. However, the necessary power can be implied from the authority to operate a treatment works for an area encompassing two or more communities.[43] In this manner, when a district accepts sewage on contract from an adjoining district or city, the participants may agree as to the proportion each will pay.

In addition, Kentucky has an interlocal cooperation act[44] which permits local government units to cooperate with other localities to their best mutual advantage. This would enable two towns or districts to agree to be served by one treatment facility and include a provision apportioning the costs.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

The local agencies lack any express power to cut off municipality's service, although they can cut off service to individual users for non-payment of bills.[45] On a state level, the DEP has the power to revoke a municipality's permit to discharge sewage if such municipality violates the rules and regulations of the department.[46] In addition, it is a violation of the general prohibition against pollution for any entity to discharge wastes in contravention of the DEP's rules and regulations.[47]

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

There is no express legislation providing for this, but it may be implied where a local agency is serving several communities and the local agency has the power to approve and regulate all new plans for connections to the system.[48]

The DEP has authority to deny or revoke permits for the discharge of sewage, industrial wastes or other wastes.[49] Thus the DEP could deny or revoke a permit if the municipality did not meet certain conditions which could include a moratorium on new hook-ups.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

None of the local agencies has express powers to assess penalties against municipalities, although Sanitation Districts can recover civil damages from any person or public corporation who violates the district's regulations.[50] Likewise, the DEP can use injunctions, civil damages, and the criminal sanction against persons, agencies, or municipalities who violate the provisions of the anti-pollution statutes.[51]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

The authority to accept industrial wastes is not express, but could be implied from the local agencies' powers to regulate and manage all aspects of the waste disposal affairs

of their districts.[52] Local agencies also have the necessary authority to set pretreatment standards in order to protect their equipment. This power comes from the express authority to deny treatment of "any wastes deemed detrimental to the works"[53] and the authority to promulgate all regulations "necessary to regulate the use, operation, and maintenance of property and facilities under its control."[54]

On the state-wide level the DEP has authority here because of its broad powers to regulate and deny the right to discharge industrial wastes.[55]

3.0 SUMMARY

This report has noted the recently enacted legislation creating the DEP and establishing the Kentucky Pollution Abatement Authority. While it is too early to determine whether the DEP will make full use of its broad powers of planning, regulation, standard setting, and enforcement, the mere existence of the new legislation with its stated purpose of enabling the state to receive more federal grant funds is significant.

Local waste treatment agencies possess most of the powers necessary to meet the provisions of the act. The chief problem here is that many of the powers are implied rather than expressly granted. Therefore, the extent of the agencies powers is uncertain. A further ambiguity results from the various local agencies having somewhat different powers or similar powers stated in different ways. A solution to eliminate the uncertainties would be for the legislature to enact legislation giving local agencies the express powers needed under the act and granting them all uniform authority.

3.1 Deficiencies

The chief deficiencies in Kentucky are the lack of express authority 1) to assure each category of user pays its proportionate share of the costs of treatment, 2) to recover certain capital costs of construction from industrial users, 3) to require each community pay its proportionate share, and 4) to refuse to accept any wastes from users not in compliance with the plan. These powers are now merely implied. Remedial legislation could remove any doubts by expressly granting to the agencies the necessary authority.

4.0 BIBLIOGRAPHY

None.

FOOTNOTES

1. Kentucky Revised Statutes, §224.031.
2. K.R.S. §224.020.
3. K.R.S. §224.033.
4. K.R.S. §224.041.
5. K.R.S. §224.045.
6. K.R.S. §224A.020.
7. K.R.S. §224A.030.
8. K.R.S. §224A.040.
9. K.R.S. §224A.050.
10. K.R.S. §224A.070.
11. K.R.S. §224.060.
12. K.R.S. §224.033.
13. K.R.S. §224.993.
14. Id.
15. Id.
16. K.R.S. §76.010.
17. K.R.S. §76.080.
18. K.R.S. §§220.220, 220.040, 220.050.
19. K.R.S. §220.240.
20. K.R.S. §220.280.
21. K.R.S. §§74.010, 74.115.
22. K.R.S. §74.407.
23. K.R.S. §§76.080, Metropolitan Sewer Districts; 220.030, 220.280, Sanitation Districts; 74.407, Water Districts.
24. K.R.S. §§76.080, Metropolitan Sewer Districts; 220.280, Sanitation Districts; 74.407, Water Districts.
25. K.R.S. §§76.100, 76.080, Metropolitan Sewer Districts; 220.270, Sanitation Districts; 74.260, Water Districts.
26. K.R.S. §§76.170, 76.190, Metropolitan Sewer Districts; 220.285, Sanitation Districts; 74.414, Water Districts.
27. K.R.S. §224.033.
28. K.R.S. §224A.050.
29. Id.
30. K.R.S. §224A.080.
31. K.R.S. §§76.090, Metropolitan Sewer Districts; 220.510, Sanitation Districts; 74.080, Water Districts.
32. K.R.S. §76.090.
33. K.R.S. §220.510.
34. K.R.S. §74.080.
35. K.R.S. §§76.090, Metropolitan Sewer Districts; 220.510, Sanitation Districts; 74.300, Water Districts.

36. K.R.S. §§76.100, Metropolitan Sewer Districts; 220.290, Sanitation Districts; 74.260, Water Districts.
37. K.R.S. §220.370.
38. K.R.S. §224A.220.
39. Constitution of Kentucky, §50.
40. K.R.S. §§76.150, Metropolitan Sewer Districts; 220.380, Sanitation Districts; 74.290, Water Districts.
41. K.R.S. §§76.150, Metropolitan Sewer Districts; 220.390, Sanitation Districts; 74.290, Water Districts.
42. K.R.S. §224A.100.
43. K.R.S. §§76.190, Metropolitan Sewer Districts; 220.350, Sanitation Districts; 74.120, Water Districts.
44. K.R.S. §65.210.
45. K.R.S. §§76.090, Metropolitan Sewer Districts; 220.510, Sanitation Districts.
46. K.R.S. §224.033.
47. K.R.S. §224.060.
48. K.R.S. §§76.080, Metropolitan Sewer Districts; 220.320, Sanitation Districts; 74.080, Water Districts.
49. K.R.S. §224.033, The DEP also has this authority under §224.060.
50. K.R.S. §220.320.
51. K.R.S. §224.993.
52. K.R.S. §§76.080, Metropolitan Sewer Districts; 220.030, Sanitation Districts; 74.070, Water Districts.
53. K.R.S. §220.320.
54. K.R.S. §76.180.
55. K.R.S. §224.033.

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MISSISSIPPI REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies.

The Mississippi Air and Water Pollution Control Commission (Commission) is in charge of the state's anti-pollution program.[1] It is responsible for the functions of planning, standard setting, regulation, and enforcement,[2] while actual operation and construction of wastewater treatment facilities is handled by local agencies.

The Commission is composed of six officials who serve by virtue of being heads of various state agencies and four members who are appointed by the governor.[3] An executive secretary appointed by the Commission has actual supervision of the water quality control programs.[4]

Broad powers are held by the Commission, including the development of comprehensive programs for the prevention and abatement of water pollution, the adoption of water quality standards, the issuance of orders prohibiting discharges or requiring construction of new disposal systems, the control over permits required for discharge of wastes, and the administration of funds and grants to the local agencies.[5] The Commission is also authorized to enter and inspect private or public property for conditions relating to pollution, and to require records to be maintained regarding the operation of disposal systems. Any person, including municipalities, (except those persons discharging wastes into a municipal system), must pay an annual fee for the inspection of the effluent.[6]

A water pollution abatement grant program was created in 1971 to previde state funds for construction of treatment plants to handle sewage and industrial wastes.[7] This program is administered by the Commission.

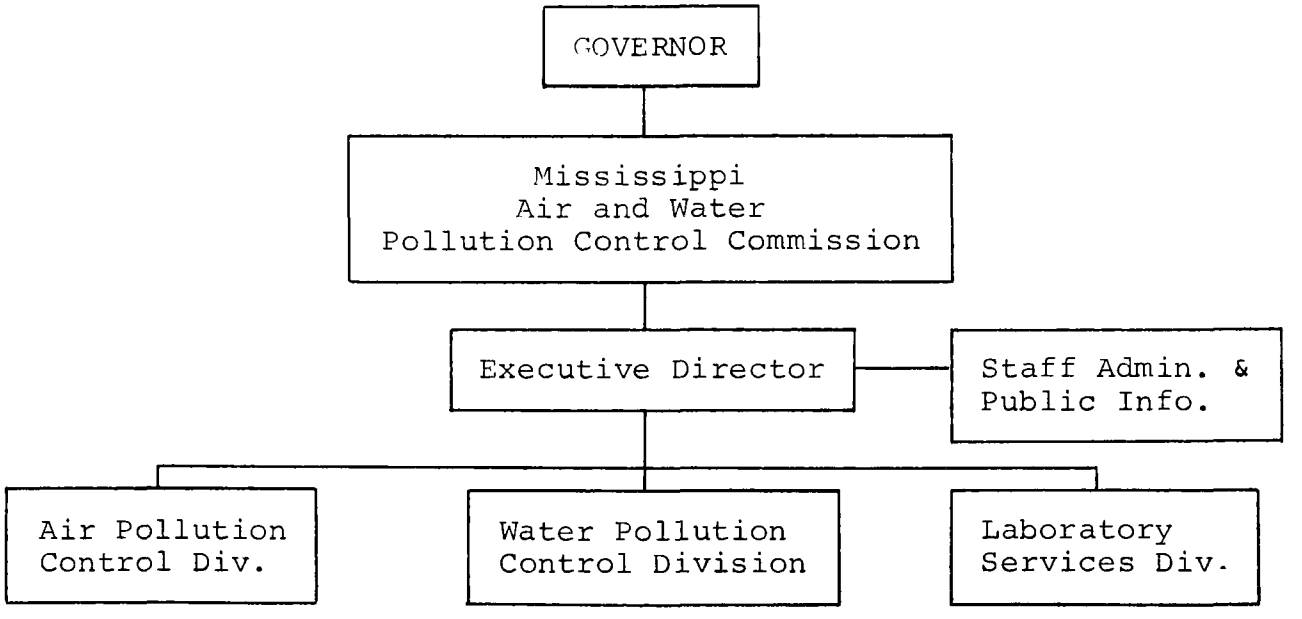
In Mississippi, it is unlawful for any person, agency, municipality, or any other entity to cause pollution of the state's waters, to place wastes in a location whereby pollution is likely, or to discharge any wastes which reduce the quality of the waters below the standards set by the Commission.[8] Violation of this statute or of any order or regulation of the

Commission can result in a complaint being served upon the violator.[9] After a hearing, the Commission can issue such orders as it deems necessary,[10] with appeals allowed to the county chancery court.[11] Penalties include fines from $50 to $3,000 per day, imprisonment up to one year, or both.[12]

At the local level, the functions of construction, operation, and maintenance of wastewater treatment plants are carried on by all municipalities[13] and certain counties.[14] Eligible as municipalities are incorporated cities, towns, and villages.[15] Only those counties which contain a national guard camp, army training camp, air base, or artillery range are authorized by statute to provide sewage disposal systems.[16] Both the counties and the municipalities have the express power to operate treatment works "within and without their territorial limits,"[17] but lack the express authority to combine systems with neighboring counties or municipalities.

In municipalities, the treatment and disposal systems are managed by Public Utilities Commissions, ranging from three to five members under the mayor.[18] These commissions have the power to make any regulations necessary for the safe and efficient operation of the system.[19]

1.2 Schematic Diagram of Existing Agencies.



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All eligible counties, as well as all municipalities, have the express statutory authority to operate and construct treatment works, either directly or by contract.[20] No specific restrictions or required procedures are attached to the power to contract. In addition, the counties and municipalities have express authority to operate outside the confines of their political boundaries.[21]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

County waste management agencies are authorized to acquire real or personal property by gift or grant.[22] From this the powers to accept money grants can be implied. Likewise, the municipalities, have express statutory authority to accept federal grants in aid of construction of a treatment system.[23]

At the state-wide level, the Commission is empowered to accept and administer loans and grants from the federal government or any other source. Such funds cannot be diverted, but must be expended only for the purposes for which provided.[24]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All local agencies have explicit authority to establish and collect charges for their services.[25] It is general authority only and does not expressly include charges based on the characteristics of the effluent.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

No express authority exists for either counties or municipalities to compute charges based on the characteristics of the user's

effluent. These agencies do, however, have the power to establish rates sufficient to provide revenues to pay the costs of operation and maintenance, retire bonds, and provide a reserve fund for improvements.[26] From this, and the lack of a specific prohibition against charging proportionately, the necessary power can reasonably be implied.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Counties and municipalities both lack any express powers to comply with this provision. This authority might be implied where acceptance of a federal grant imposes a contractual obligation on the local agency to comply with federal regulation. That is, a contractual duty or debt would be created which would allow the agencies to recover construction costs from industry under the express powers the agencies have to compute rates which pay operation costs and service the debt.[27]

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Counties have explicit authority to enter into contracts for construction and financing of treatment systems, which implies the authority to incur short-term indebtedness.[28]

Municipalities have similar contractual powers,[29] as well as the express authority to borrow money and issue negotiable notes for the purpose of improving or repairing disposal systems.[30] Such debts must be repaid within three years and cannot exceed five percent of the gross revenues of the system in the preceding fiscal year.[31]

2.4.1 General Obligation Funding.

Counties are not expressly authorized to meet this provision. All counties in Mississippi have the power to issue general obligation bonds for specific enumerated purposes, but financing sewage disposal works is not among those purposes.[32]

Municipalities have the express power to issue general obligation bonds for public utilities and sewage systems.[33] Such bonds must mature within 25 years and pay not more than six percent interest.[34] In addition, the bond issue must be approved by three-fifths of the voters of the municipality.[35]

2.4.2 Special Funds and Revenue Funding.

Those counties eligible to operate sewage treatment systems have express authority to issue revenue bonds.[36] These bonds must mature within 40 years and bear no more than five percent interest.[37]

All municipalities can issue revenue bonds.[38] Such bonds are required to mature before 35 years at an interest rate to be determined before issuance.[39] In addition, the municipality must pass an ordinance authorizing the bonds,[40] and bonds for new facilities must be approved by a majority of the municipality's voters.[41] If the amount is over five million dollars, a special fiscal advisor must assist the municipality.[42]

2.4.3 Other Methods of Financing.

Any political subdivision authorized to operate sewage and industrial waste disposal and treatment plants can borrow funds for construction of facilities from the state's water pollution abatement grant program.[43] The amount is limited to 25 percent of the total cost of construction.[44] Repayment must be accomplished within 20 years.[45]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

There exists no express authority for either counties or municipalities to assure compliance with this provision. Furthermore, little authority exists for one political subdivision to serve as a disposal and treatment agency for surrounding communities. Such authority would imply the power to charge communities proportionately, since the communities could agree to rates and charges by contract. However, the only authority for such an areawide program is the power for two or more counties or municipalities to join together to create regional planning commissions which merely give advice on planning and zoning,[46] or the power of counties and municipalities to operate sewage disposal systems "within and without their territorial limits."[47] Mississippi does not have an interlocal cooperation act as such.

It may be possible to imply the power for one community to serve surrounding communities, and from this to further imply that

the communities could then agree among themselves as to proportionate rates.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Both counties and municipalities lack any express power to cut-off service to communities who violate any provisions of the plan.

There is authority at the state level for the Commission to deny or revoke the permits which are required for construction of new disposal and treatment works, for discharging from such works, and for operating any industry which discharges pollution.[48] A possible conflict should be noted with the statute that states that municipalities do not need a permit to construct or improve any system.[49] The state also may have some power due to the general ban on water pollution which declares it unlawful to cause pollution of the waters or to discharge wastes which lower the quality of the waters below standards.[50]

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

No express authority exists for either counties or municipalities to deny new hook-ups. Some authority may be implied, however. For example, counties have the power to maintain their systems.[51] They could therefore refuse new hook-ups which would be harmful to the system. Counties also can make contracts regarding operation and maintenance of their systems.[52] The terms of such contracts could provide for denial of new hook-ups for violators of the plan.

It may also be implied that municipalities have such power. They can adopt such ordinances and resolutions and do all things and perform all acts necessary, proper or desirable to effectuate the purposes of the statutes dealing with waste disposal.[53] In addition, the public utilities commissions have "entire control and management" of such treatment systems.[54] From this it is possible that the necessary authority could be implied.

At the state level, the Commission can deny permits for construction and operation of new industries which will pollute the waters, and deny the use of any new outlets for discharging wastes.[55]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

None of the local government units has the express authority to assess municipalities.

Statewide, any person or political subdivision found in violation of a Commission order is guilty of a misdemeanor and subject to being injoined and to penalties of a 50 to three thousand dollar a day fine and one year in jail.[56]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Counties and municipalities do not have express authority to accept industrial wastes. Such authority can reasonably be implied from the power to operate a "sewage system, sewage disposal system, garbage disposal system, rubbish disposal system or incinerators."[57]

The power of local governments to require pretreatment of industrial wastes can be implied from the power of counties to make contracts regarding operation and maintenance of the system,[58] and the municipal public utilities commissions' power to make such regulations as it may deem necessary for the safe, economic, and efficient management and protection of the system.[59]

The State Commission also has the authority to require permits and to require proper maintenance of disposal systems.[60]

3.0 SUMMARY

In Mississippi, the Air and Water Pollution Control Commission is vested with potentially far-reaching powers. Its authority to develop planning, set quality standards, issue prohibition orders, conduct inspections, and control permits is significant.

The local government units which handle the construction, operation, and maintenance of treatment works are less well equipped to comply with the provisions of the act. For instance, the counties and municipalities have only a general authority to set rates and charges, and no express authority to assess communities proportionately or to refuse to accept wastes from violators. New legislation is definitely needed to give local agencies the express powers needed to comply with the act.

3.1 Deficiencies

Several necessary powers are now merely implied instead of being expressly granted to the proper agencies. This creates confusion over the exact extent of these powers. It is difficult even to imply the existence of some other powers. The main problem areas in Mississippi are: 1) collecting rates and charges based on characteristics of the effluent, 2) recovering construction costs from industrial users, 3) assuring communities pay proportionately, and 4) refusing to accept wastes from municipalities.

4.0 BIBLIOGRAPHY

Note, Water Pollution Control in Mississippi, 41 Miss. L. J. 351 (1970).

FOOTNOTES

1. Miss. Code Ann. §49-17-7 (1972).
2. Miss. Code Ann. §49-17-17.
3. Miss. Code Ann. §49-17-7.
4. Miss. Code Ann. §49-17-13.
5. Miss. Code Ann. §49-17-17.
6. Miss. Code Ann. §49-17-21.
7. Miss. Code Ann. §49-17-61.
8. Miss. Code Ann. §49-17-29.
9. Miss. Code Ann. §49-17-31.
10. Id.
11. Miss. Code Ann. §49-17-41.
12. Miss. Code Ann. §49-17-43.
13. Miss. Code Ann. §21-27-23.
14. Miss. Code Ann. §17-5-3.
15. Miss. Code Ann. §21-27-11.
16. Miss. Code Ann. §17-5-3.
17. Miss. Code Ann. §§17-5-3, counties; 21-27-23, municipalities.
18. Miss. Code Ann. §21-27-13.
19. Miss. Code Ann. §21-27-17.
20. Miss. Code Ann. §§17-5-5, counties; 21-27-23, municipalities.
21. Miss. Code Ann. §§17-5-3, counties; 21-27-23, municipalities.
22. Miss. Code Ann. §17-5-5.
23. Miss. Code Ann. §21-27-23.
24. Miss. Code Ann. §49-17-17.
25. Miss. Code Ann. §§17-5-5, counties; 21-27-23, municipalities.
26. Miss. Code Ann. §§17-5-5, counties; 21-27-47, municipalities.
27. Id.

28. Miss. Code Ann. §17-5-5.
29. Miss. Code Ann. §21-27-23.
30. Miss. Code Ann. §21-27-25.
31. Id.
32. Miss. Code Ann. §19-9-1.
33. Miss. Code Ann. §21-33-301.
34. Miss. Code Ann. §21-33-315.
35. Miss. Code Ann. §21-33-311.
36. Miss. Code Ann. §17-5-3.
37. Miss. Code Ann. §17-5-7.
38. Miss. Code Ann. §21-27-23.
39. Miss. Code Ann. §21-27-45.
40. Miss. Code Ann. §21-27-41.
41. Miss. Code Ann. §21-27-43.
42. Miss. Code Ann. §21-27-45.
43. Miss. Code Ann. §49-17-61.
44. Id.
45. Miss. Code Ann. §49-17-65.
46. Miss. Code Ann. §17-1-29.
47. Miss. Code Ann. §17-5-3; for municipalities see §§21-27-23, 21-27-39.
48. Miss. Code Ann. §§49-17-17, 49-17-29.
49. Miss. Code Ann. §21-27-29.
50. Miss. Code Ann. §49-17-29.
51. Miss. Code Ann. §17-5-5.
52. Id.
53. Miss. Code Ann. §21-27-23.
54. Miss. Code Ann. §21-27-17.
55. Miss. Code Ann. §49-17-29.
56. Miss. Code Ann. §49-17-43.
57. Miss. Code Ann. §21-27-23; for counties see 17-5-3.
58. Miss. Code Ann. §17-5-5.
59. Miss. Code Ann. §21-27-17.
60. Miss. Code Ann. §49-17-17.

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NORTH CAROLINA REPORT

(1972)

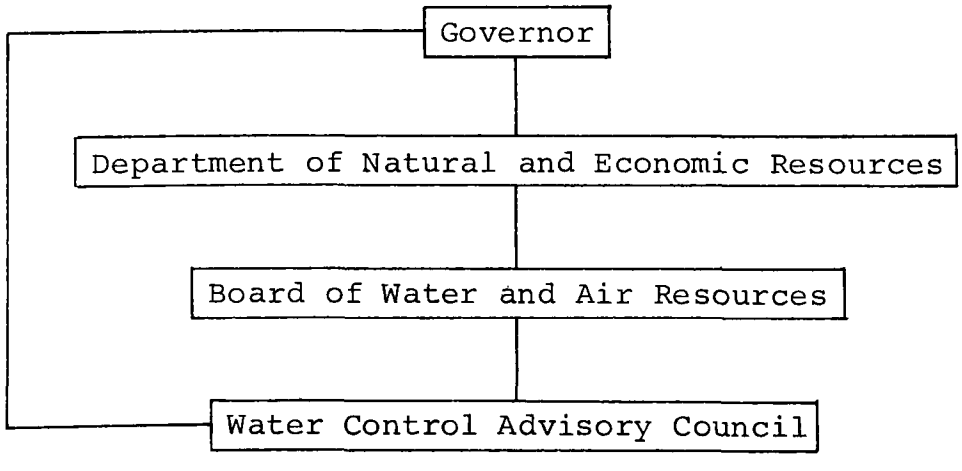
1.0 OVERVIEW

1.1 Description of Existing Agencies

The North Carolina Board of Water and Air Resources[1] was created in 1967. This board sets water quality standards,[2] enforces these standards by special orders,[3] and issues discharge permits.[4] An advisory council assists the board in its standard setting powers.[5]

Three different waste water management agencies exist in North Carolina. Sanitary districts[6] may be created upon petition of fifty-one percent of the freeholders in the proposed district to the State Board of Health.[7] Metropolitan sewerage districts may be created by any county, municipality, or combination thereof.[8] Finally, water and sewer authorities may be created by any combination of two or more municipalities.[9] All of these agencies may also use special legislation which was passed covering all sanitary sewerage systems in the state.[10] Whenever this legislation proves to be more expansive than that provided for a given system it is cited instead of the system's statute.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All counties and municipalities may "construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate. . . any sanitary sewerage system"[11] either together or separately.[12]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Metropolitan sewerage districts and water and sewer authorities may apply for and receive funds from any source.[13] While no such provision exists for sanitary districts there is no prohibition against receiving funds.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All county and municipal sewerage systems may raise revenues by collecting reasonable rates.[14]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Each category of user is assured equal treatment since reasonable rates must be imposed among the same service class.[15]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Sanitary districts and water and sewer authorities may charge industrial users under their respective rate sections.[16] Metropolitan sewerage districts have no such authority. However, the general user charges mentioned in 2.3.1 should permit these districts to make similar charges.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All three systems may issue some form of bonds. These bonds will be subject to the provisions of general statutes, Chapter 159, after 1 July 1973. This chapter's provisions have been included, wherever relevant, in the discussion below.

2.4.1 General Obligation Funding.

Sanitary districts and metropolitan sewerage districts have taxing powers and may issue general obligation bonds.[17] These bonds must pledge the authority's faith and credit[18] and may be additionally served by revenues.[19] Voter approval of these bonds is mandatory unless the bonds are for no more than two-thirds of the amount by which the outstanding general obligation bonded debt has been reduced.[20]

2.4.2 Special Funds and Revenue Funding.

Revenue bonds payable solely out of the agencies' revenues may be issued by all systems.[21]

2.4.3 Other Methods of Financing

No other method of financing is available.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Any group of municipalities and/or counties may combine, by agreement, to form one of the three systems. This combination would apportion costs of construction and operation according to a method which is mutually acceptable.[22] This power should assure proper apportionment of costs among those communities which adopt a joint sewerage system.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

No provision permits such a refusal. Thus, since refusing to accept a community's wastes might constitute a serious health hazard, probably no system would be able to refuse absent some specific legislative authorization.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

User hook-ups can most likely be denied by all systems by using their rule-making powers.[23]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

All persons, firms or corporations which violate any regulation of any sewer system are liable for a fine of up to $500 and a thirty day jail sentence.[24] They are also liable for any damage to the system caused by a non-complying discharge.[25]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

All systems may accept sewage waste from industrial sources.[26] These wastes may be regulated by the rules and regulations promulgated by the system involved; thus, the wastes may be refused whenever necessary.

3.0 SUMMARY

North Carolina should have little difficulty in obtaining funds for its sewage systems.

4.0 BIBLIOGRAPHY

1. Poole, Henry E., The Laws Relating to Abatement and Control of Water and Air Pollution in North Carolina, 3 N.C. Cent. L. Rev. 31 (1971).

2. Wicker, Warren J., Arrangements for Water and Sewage Services, University of North Carolina Institute for Government (1966).

FOOTNOTES

1. Gen. Stat. N.C. Ann. §143-211 et seq. (Supp. 1971).
2. Gen. Stat. N.C. Ann. §143-214.1 (Supp. 1971).
3. Gen. Stat. N.C. Ann. §143-215.2 (Supp. 1971).
4. Gen. Stat. N.C. Ann. §143-215.1 (Supp. 1971).
5. The Water Control Advisory Council, Gen. Stat. N.C. Ann. §143-214(j) (Supp. 1971).

6. Gen. Stat. N.C. Ann. §130-123 et seq. (1964).
7. Gen. Stat. N.C. Ann. §130-124 (Supp. 1971).
8. Gen. Stat. N.C. Ann. §153-295 et seq. (1964).
9. Gen. Stat. N.C. Ann. §162A-1 et seq.
10. Gen. Stat. N.C. Ann. §153-284 et seq. (1964).
11. Gen. Stat. N.C. Ann. §153-284 (1964).
12. Gen. Stat. N.C. Ann. §153-287 (1964).
13. Gen. Stat. N.C. Ann. §§153-300(13) (1964), 162 A-6(13) (1972).
14. Gen. Stat. N.C. Ann. §153-286 (1964).
15. Id.
16. The sanitary District Act provides that rates may be passed on the exact benefits which a user derives from the system N.C. Gen. Stat. §130-144 (1964). The North Carolina Water and Sewer Authorities Act permits charging users "rates . . . for . . . facilities furnished." N.C. Gen. Stat. §162 A-6 (9) (1972).
17. N.C. Gen. Stat. Ann. §§130-138, 153-301 (1964).
18. N.C. Gen. Stat. Ann. §159-46 (1972) (eff. 1 July 1973).
19. N.C. Gen. Stat. Ann. §159-47 (1972) (eff. 1 July 1973).
20. N.C. Gen. Stat. Ann. §159-49 (1972) (eff. 1 July 1973).
21. N.C. Gen. Stat. Ann. §§130-138 (1964) 155-310 (Supp. 1971). 162A-8 (1972).
22. N.C. Gen. Stat. Ann. §153-287 (1964).
23. N.C. Gen. Stat. Ann. §153-286.1 (Supp. 1971).
24. Id.
25. Id.
26. N.C. Gen. Stat. Ann. §§130-125, 153-296(10), 162A-2(8).

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SOUTH CAROLINA REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

In South Carolina, the agency in charge of abating pollution is the Pollution Control Authority (P.C.A.).[1] It is a separate state agency with broad powers over planning, standard setting, regulations, enforcement, and grant management.[2] More specifically, the P.C.A. has among its powers the authority to prepare and develop a comprehensive program for the abatement, control, and prevention of water pollution,[3] and to adopt standards which determine what qualities of water indicate a polluted condition.[4] The P.C.A. can also issue orders requiring the discontinuance of discharges of sewage and industrial wastes, issue or revoke permits for construction and operation of disposal systems, and inspect disposal systems to determine if they comply with standards.[5] Enforcement procedures include instituting legal proceedings seeking injunctions, administering penalties, and prohibiting a municipality found in violation from issuing any building permits.[6]

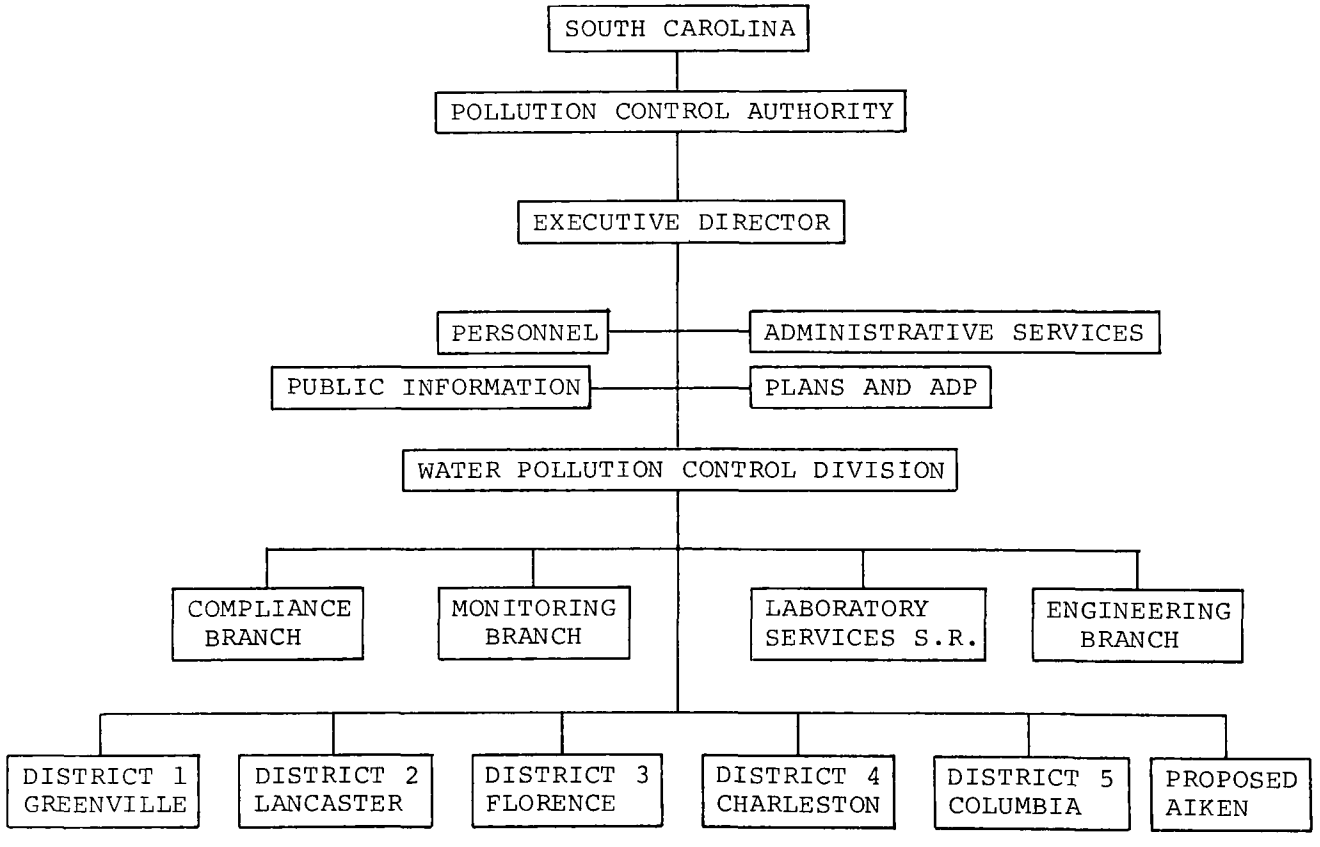
A general prohibition of pollution forbids any person, corporation, agency, municipality or other legal entity to willfully or negligently discharge into any state waters any matter that causes pollution.[7]

Violation of the regulations or statutes prohibiting pollution can result in an order from the P.C.A. requiring discontinuance of the practice.[8] Such an order may be issued after giving the violator a reasonable time to comply with the standards.[9] Appeals are allowed to the court of common pleas of the county in which the pollution occurs.[10] All legal proceedings are handled by the state Attorney General.[11] Penalties for violations range from a $100 fine to a $5,000 fine, or up to two years imprisonment, or both.[12] Each day of violation is deemed a separate offense.[13]

The functions of actual construction and operation of wastewater treatment facilities are performed at the local level by municipalities and districts. Municipalities empowered to operate and construct treatment works include counties,

townships, cities, towns and other political subdivisions.[14] These functions can also be handled by special districts which may be within one county or several counties.[15] In addition, all governmental entities are authorized to cooperate and join together to provide for common collection, disposal, and treatment of sewage.[16] This in effect authorizes regional or areawide districts enabling any governmental entity to contract with any other for these services.[17]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All municipalities have express authority to "construct, acquire, own, equip, operate, maintain, enlarge, extend, or increase" sewers and disposal systems.[18] Special districts also have the power to construct and operate such systems, either directly or by contract.[19] In addition, those entities joining together to form regional districts are empowered to construct, operate, and maintain treatment facilities as required by the act.[20]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All local government units have the statutory authority to apply for and receive state and federal grants.[21]

Powers are also vested in the P.C.A. to accept, receive and administer grants or other funds for pollution abatement purposes.[22] There is no statutory prohibition on the P.C.A. which would prevent diversion of funds or grants received for projects. Indeed, the agency has the express power to approve local projects for which applications for federal grants are made.[23] Some measures would seem necessary here to prevent diversion of funds unless the terms of the grant prohibit diversion.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Express authority to establish rates and charges is held by all local agencies responsible for operation of treatment facilities.[24]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Although there is no express authority to charge users proportionately according to the characteristics of their effluents,

this power is not prohibited, and it might be implied from some of the express powers of the agencies. For example, municipalities have the authority to compute rates sufficient to service the bond debt, pay expenses of operation and maintenance, and build up a reserve fund for improvements.[25] Rates based on characteristics of effluents certainly would not be inconsistent with these express powers.

Special districts are empowered to charge "just and equitable rates."[26] This would imply that proportionate charges would not be prohibited.

When local units combine to form a regional district, the parties may pay according to their quantum of use,[27] and may charge individual users within their boundaries a rate sufficient to pay the costs of operation and maintenance.[28] This could be construed to include the power to charge proportionately based on the characteristics of the effluent.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the local agencies has the express powers necessary to comply with this provision. The powers may be present by implication from the total powers held by these agencies. For example, if the grant by the EPA creates an obligation on the part of the local agency to abide by the terms of the grant agreement, then this provision could be included in the power of the local agencies to set rates sufficient to service the debt.[29]

In addition, there is express authority for special districts and municipalities to recover the costs of constructing treatment facilities by imposing front-footage assessments against properties abutting the sewage collection laterals.[30] This could include recovering construction costs from industrial users as well, but it would most likely not bear any relation to the cost to be recovered from a particular industry.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

None of the local agencies has the express statutory power to incur short-term indebtedness. The legal ability may be implied,

however, from the agencies' power to incur long-term indebtedness discussed in sections 2.4.1 and 2.4.2. The necessary authority could also be inferred from the power of the local agencies to enter into contracts for construction.[31]

2.4.1 General Obligation Funding.

Municipalities in South Carolina are vested with the authority to issue general obligation bonds backed by the full faith and credit of the particular political subdivision.[32] The limitations on these bonds are that they must pass a majority vote of the electors,[33] they must mature within forty years,[34] and the interest rate must be determined by the municipal council.[35]

Special districts "may issue and sell serial coupon bonds for and in behalf of the township within which the district is located."[36] Such bonds must mature within forty years and bear interest at a rate not more than six percent.[37] The bond issue must be approved by a majority of the electors of the district.[38]

Governmental entities cooperating in a regional district are empowered to issue general obligation bonds.[39] Special districts which enter into such a regional district are expressly authorized to issue general obligation bonds as set forth in the County Bond Act.[40] Bonds authorized by the County Bond Act must mature within twenty-five years and bear interest at a rate previously determined.[41]

2.4.2 Special Funds and Revenue Funding.

Revenue bonds may be issued by any municipality in order to finance the construction or improvement of wastewater treatment systems.[42] The rate of interest of these bonds cannot exceed six percent, and they must mature within forty-five years.[43]

Special districts also have the authority to issue revenue bonds, at least where the district has borrowed funds from the United States.[44]

Those local government units forming regional districts are likewise empowered to issue revenue bonds as well as general obligation bonds.[45]

2.4.3 Other Methods of Financing.

All local agencies empowered to collect, treat and dispose

of sewage are able to enter into assistance agreements with the State Budget and Control Board for grants of state funds.[46] Such grants are to be repaid by means of a special service charge to users of the wastewater system as well as a special property tax.[47]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Compliance with this provision should be no problem in South Carolina as the local agencies have both express and implied powers to charge communities proportionately.

Municipalities' powers in this area are implied. All municipalities have the authority to unite in joint projects with each other,[48] and from this it is reasonable to assume that the terms of the agreement could establish proportionate rates. In addition, cities and towns have the express power to enter into contracts with political subdivisions outside their corporate limits for sewage treatment systems.[49] They can do so "upon such terms and at such rates and charges as may be fixed by the contract or agreement between the parties."[50]

Special districts also have implied powers to charge proportionately. This stems from their authority to contract and connect with existing sewerage systems of municipalities or other districts.[51] It is reasonable to imply that such contracts could provide for proportionate rates.

There is express statutory authority for communities joining a regional district to pay proportionate rates.

> Such contracts may provide that each contracting party shall pay a portion of the cost of operating and maintaining such sewer facilities and shall either provide that each contracting party shall pay a specified percentage of such operation and maintenance, or shall provide that the use of the sewer facilities be ascertained by metering or other device measuring the quantum of the use of each contracting party as a means of providing the share of the cost of operation and maintenance, and the parties may agree to periodic review and revision of such costs.[52]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 applicable to Such Area. [§208(c)(2)(H)].

Municipalities and special districts lack any express authority to cut off service to non-complying municipalities, although a provision to this effect might be included in an agreement for joint operation of a treatment system.

The necessary powers could be implied for regional districts because the statute provides that the agreements between the political subdivisions may be enforced by specific performance, injunction, or mandamus.[53] Therefore, if the provisions of the approved plan are made part of the agreement between local units, it is reasonable to assume that a municipality could be enjoined from violating the provisions.

In addition, the P.C.A. has authority at the state-wide level due to its control over the permits required for constructing new outlets or discharging from the same.[54] Permits are also required to construct, change or increase the volume of a disposal system.[55] These permits contain conditions of use, and it is unlawful to violate the conditions.[56]

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

There is no statutory authority for any of the local agencies to deny new or additional hook-ups to their systems. This power is not expressly prohibited either, so it could reasonably be part of a unit's general authority over waste disposal matters or provided for in an agreement between two units.

On a state-wide scale, the P.C.A. has the necessary authority to deny new hook-ups due to its permit-issuance powers and its power to prohibit a municipality from issuing building permits.[57]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Municipalities and special districts do not have the express power to assess municipalities or take similar sanctions against those not in compliance. Regional districts also lack the necessary powers, although they are able to enforce the terms of their contracts with the local units by specific performance, injunction, or mandamus.[58]

The P.C.A. does have express authority in this area as it can administer penalties, revoke discharge permits and even prohibit a municipality from issuing any building permits.[59]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Express authority exists for all local agencies to accept and treat industrial wastes. The definition of the term "sewage" includes industrial wastes in each case.[60]

Implied authority can be found for requiring pretreatment of industrial wastes as well. Municipalities are authorized to enact any rules and regulations necessary for "maintenance, operation, protection, use, control, and repairing of its system."[61] Special districts also have the legal ability to make and enforce regulations regarding the use of sewage facilities.[62] In regional districts, the necessary authority to require pretreatment might be implied from their power to maintain their facilities.[63]

3.0 SUMMARY

Legislation exists in South Carolina to enable the state to comply with most of the provisions of the act. The state agency, the P.C.A., is vested with very strong powers over regulation, planning, standard setting, and enforcement. The local agencies in charge of the actual construction and operation of treatment facilities are likewise endowed with the statutory authority to comply with most parts of the act. Most notable here is the authority for any local governmental entity to cooperate with other such entities in joint waste disposal and treatment projects. This authorizes something very near the area-wide districts called for by the act.

There are some deficiencies, but most of them concern areas of the law where powers are merely implied rather than being expressly granted. New legislation would clear up these deficiencies by expressly granting the local agencies all necessary powers.

3.1 Deficiencies

The most troublesome deficiency in South Carolina concerns the lack of authority to refuse to accept wastes from a non-complying municipality. No express authority exists here, and the implied authority present is tenuous. In addition, the power of local agencies to deny new hook-ups or assess penalties to violators is even more remote. New legislation

should be enacted to remedy this entire area by giving the express powers needed.

Other powers that are merely implied rather than expressly granted include the power to charge proportionate rates to users, to recover certain capital construction costs from industries, and to incur short-term indebtedness. While these powers may be reasonably implied to exist, they nonetheless should be expressly granted to the agencies by the legislature.

Another problem is the possibility that the P.C.A. can divert grants of funds intended for local projects. A provision should be added by the legislature barring such a diversion.

4.0 BIBLIOGRAPHY

1. Fisher and Gaston, Pollution Control Practice in South Carolina -- An Overview, 23 S. Car. L. Rev. 723 (1971).

FOOTNOTES

1. S.C. Code Ann. §63-195 (Cum. Supp. 1971).
2. S.C. Code Ann. §63-195.8 (Cum. Supp. 1971).
3. Id.
4. S.C. Code Ann. §63-195.7 (Cum. Supp. 1971). See also Harper v. Schooler, _____S.C._____, 189 S.E. 2d 284 (1972).
5. S.C. Code Ann. §63-195.8 (Cum. Supp. 1971).
6. Id.
7. S.C. Code Ann. §63-195.12 (Cum. Supp. 1971).
8. S.C. Code Ann. §63-195.16 (Cum. Supp. 1971).
9. Id.
10. S.C. Code Ann. §63-195.23 (Cum. Supp. 1971).
11. S.C. Code Ann. §63-195.24 (Cum. Supp. 1971).
12. S.C. Code Ann. §63-195.35 (Cum. Supp. 1971).
13. Id.
14. S.C. Code Ann. §59-363 (1962).
15. S.C. Code Ann. §59-601 (1962) et. seq.
16. S.C. Code Ann. §59-507.1 (Cum. Supp. 1971).
17. See S.C. Code Ann. Title 59, Art. 10.3 (Cum. Supp. 1971).
18. S.C. Code Ann. §59-369 (1962).
19. S.C. Code Ann. §59-609 (1962).
20. S.C. Code Ann. §59-507.1 (Cum. Supp. 1971).
21. S.C. Code Ann. §630195.76 (Supp. 1972).
22. S.C. Code Ann. §63-195.8 (Cum. Supp. 1971).
23. Id.

24. See S.C. Code Ann. §59-397 (1962) for municipalities, S.C. Code Ann. §59-612 (1962) for special districts, and S.C. Code Ann. §§59-507.4, 59-507.5 (Cum. Supp. 1971) for regional districts.
25. S.C. Code Ann. §59-397 (1962).
26. S.C. Code Ann. §59-612 (1962).
27. S.C. Code Ann. §59-507.3 (Cum. Supp. 1971).
28. S.C. Code Ann. §59-507.5 (Cum. Supp. 1971).
29. S.C. Code Ann. §59-397 (1962) for municipalities, S.C. Code Ann. §59-507.5 (Cum. Supp. 1971) for regional districts.
30. S.C. Code Ann. §§59-495, 59-501 (Cum. Supp. 1971).
31. See S.C. Code Ann. §59-486 (1962) for municipalities, S.C. Code Ann. §59-609 (1962) for special districts, and S.C. Code Ann. §59-507.1 (Cum. Supp. 1971) for regional districts.
32. S.C. Code Ann. §47-834 (1962).
33. S.C. Code Ann. §47-838 (1962) et. seq.
34. S.C. Code Ann. §47-844 (1962).
35. S.C. Code Ann. §47-848 (1962).
36. S.C. Code Ann. §59-616 (1962).
37. S.C. Code Ann. §59-617 (Cum. Supp. 1971).
38. S.C. Code Ann. §§59-618, 59-619 (1962).
39. S.C. Code Ann. §59-507.3 (Cum. Supp. 1971).
40. The County Bond Act is found at S.C. Code Ann. §§14-517 to 14-528 (1962).
41. S.C. Code Ann. §§14-517, 14-521 (1962).
42. S.C. Code Ann. §59-379 (1962).
43. S.C. Code Ann. §59-382 (1962).
44. S.C. Code Ann. §59-622 (1962).
45. S.C. Code Ann. §§59-507.2, 59-507.3 (Cum. Supp. 1971). See also S.C. code Ann. §59-507.12 (Cum. Supp. 1971).
46. See S.C. Code Ann. Title 63, Chap. 2.3A (Supp. 1972).
47. S.C. Code Ann. §63-195.76 (Supp. 1972).
48. S.C. Code Ann. §59-366 (1962).
49. S.C. Code Ann. §59-491 (1962).
50. Id.
51. S.C. Code Ann. §59-609 (1962).
52. S.C. Code Ann. §59-507.3 (Cum. Supp. 1971).
53. S.C. Code Ann. §59-507.11 (Cum. Supp. 1971).
54. S.C. Code Ann. §63-195.13 (Cum. Supp. 1971).
55. S.C. Code Ann. §63-195.14 (Cum. Supp. 1971).
56. Id.
57. S.C. Code Ann. §§63-195.13, 63-195.14; §64-195.8 (Cum. Supp. 1971).
58. S.C. Code Ann. §59-507.11 (Cum. Supp. 1971).
59. S.C. Code Ann. §64-195.8 (Cum. Supp. 1971).
60. See S.C. Code Ann. §§59-502 for municipalities, 59-496 for special districts, 59-507 for regional districts (Cum. Supp. 1971).

61. S.C. Code Ann. §59-493 (1962).
62. S.C. Code Ann. §59-497 (Cum. Supp. 1971).
63. S.C. Code Ann. §59-507.1 (Cum. Supp. 1971).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

TENNESSEE REPORT
(1972)

1.0 OVERVIEW

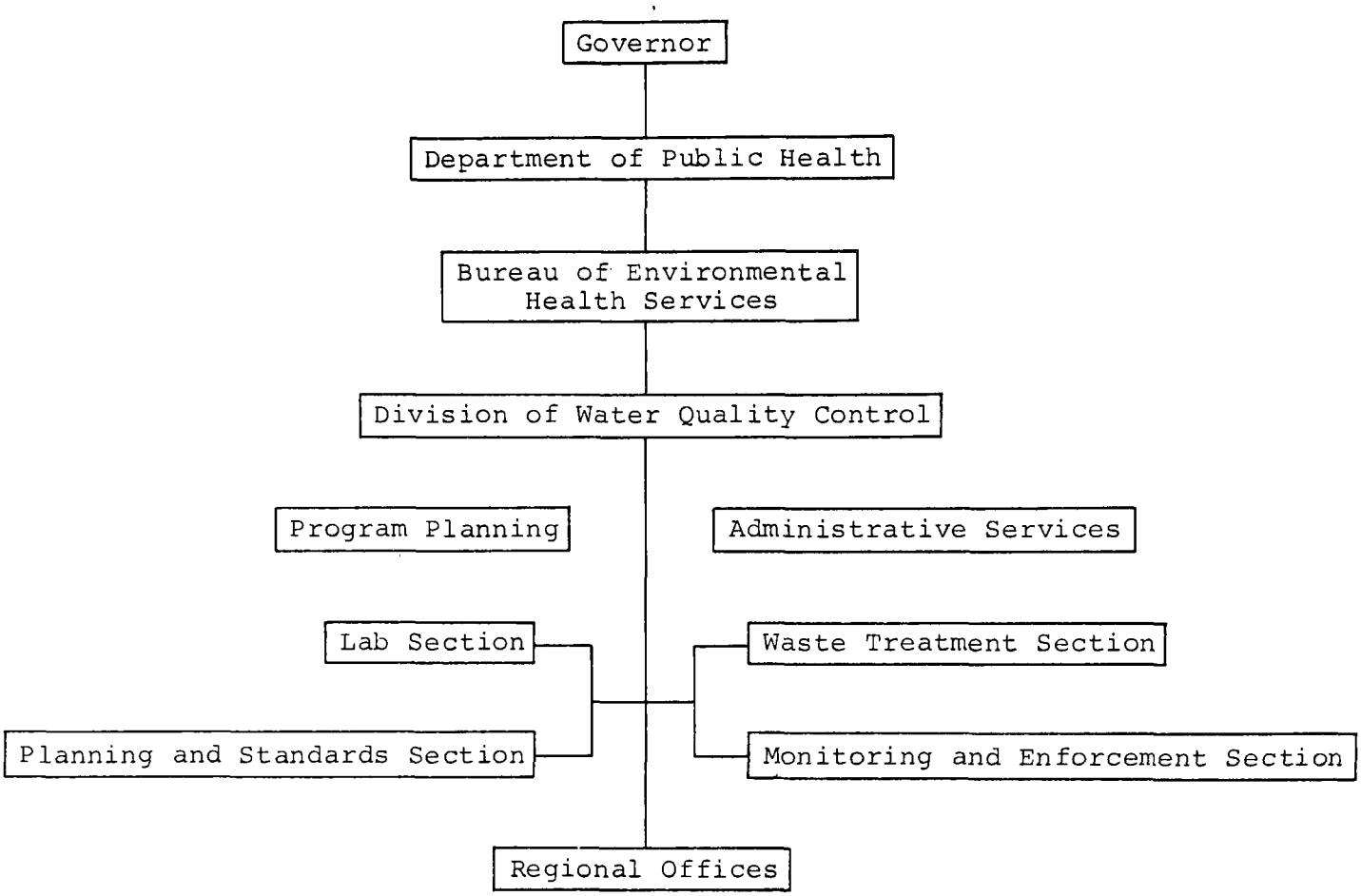
1.1 Description of Existing Agencies

Tennessee manages part of their water resources through their health department. Authority is divided, however, between the Tennessee Department of Public Health and the newly renamed Water Quality Control Board.

The Water Quality Control Board performs the state's water quality planning and sets standards.[1] Prosecution of polluters and the task of issuing discharge permits are left to the commissioner of the Department of Public Health.[2] It is presumed that the statute implies that this is a function of the health department since the director of the department's division of water quality may be delegated the commissioner's functions.[3] The health commissioner also handles all waste discharge monitoring.[4] Appeal jurisdiction has been granted to the board over all matters relating to permits and discharges.[5] Reversals may be rare, however, since the health commissioner is also the Water Quality Control Board's chairman.[6]

The functions of sewage collection and treatment are handled by county and municipal sewerage systems.[7] Both of these systems may become regional by accepting another area's sewage.[8]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Both counties and municipalities may own, operate, construct and maintain their own sewerage systems.[9]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Neither counties nor municipalities have specific statutory authorization to apply for and receive federal funds. Only the Department of Public Health is expressly assigned the duty of applying for and receiving federal grant money.[10]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Counties and municipalities may raise revenues by imposing charges on users.[11] The methods of charging users are left to the individual authority's determination.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Municipal sewer systems must "establish and maintain just and equitable rates and charges."[12] No such mandate is given county sewerage systems, although they may calculate rates so as to insure fiscal solvency.[13] Thus rates based on the composition of the user's effluent, while not expressly authorized, are not expressly prohibited.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

No express provision authorizes recovery of the federal portion

of construction costs for industrial users' portions of treatment works.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Both counties and municipalities may incur some form of long-term construction indebtedness.

2.4.1 General Obligation Funding.

General obligation bonds may be issued only by counties. These bonds are not subject to debt limitations and may be made for periods of up to forty years.[14] Unless ten percent of the qualified voters petition the issuing county's governing board to protest the issue, the governing board may approve any form of bond issue. Should such a petition be verified, an election must be held and the issue approved by majority vote before the proposed bonds may be issued.[15]

2.4.2 Special Funds and Revenue Funding.

Revenue bonds may be issued by both counties and municipalities. Municipal bonds may be issued upon majority vote of that municipality's governing body.[16] Counties arrange for issuing all bonds according to the method mentioned in paragraph 2.4.1

2.4.3 Other Methods of Financing.

Counties are also provided with one further method of debt financing in that they may issue bonds which may be repaid from revenues of a specified public utility or any combination of a group of such public utilities.[17]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Municipalities and counties are granted the statutory authorization to join together into regional treatment agencies. They are given, however, different mandates in this regard. Municipalities may join together whenever such a joint venture is considered "feasible."[18] On the other hand, counties may band together "upon terms deemed advantageous by the [sewage system's board]."[19] The statute for municipalities, thus,

remains silent on the question of assuring equal, proportionate treatment of each participating communities so that proportionate charges are levied against each one. The county statute appears to permit unequal treatment. "Terms deemed advantageous" to the controlling community might quite possibly be discriminatory against the other communities. If, however, the participating communities agree to the proportion each is to bear this should meet the Act's requirement.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Ara. [§208(c)(2)(H)].

No treatment agency is authorized to refuse to receive a communities non-complying wastes. Thus, since this is an exceptionally harsh remedy, legislation would be required.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Such a moritorium effect is not permitted by statute.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

No further sanctions are expressly authorized by statute.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Both county and municipal authorities may handle industrial waste.[20] No agency has been given statutory sanction to prevent non-conforming industrial waste discharge, but such authority is implied to protect the plant's sewage treatment processes from potential damage.

3.0 SUMMARY

Tennessee can comply with most of the provisions of the Act. The areas of deficiency are described in paragraph 3.1. Most of the problems cited below stem from statutory ommissions -- i.e. lack of express statutory authority.

3.1 Deficiencies

1. Re 2.2 Both county and municipal sewerage authorities should be permitted to receive and apply for federal funds. This is not specifically disallowed, but no statute expressly permits the reception of grants.

2. Re 2.3, 2.3.1, 2.3.2 In order to comply with the Act, specific legislation should be enacted to assure that each category of user in the service community pays its proportionate share of costs. This is impliedly assured in municipal sewage systems, but may not be the case in county systems.

3. Re 2.5 The county statute should be amended so that it will require that each community will bear its proportionate share of the treatment costs.

4. Re 2.6 No statutory sanctions are provided to permit authorities to punish or prevent municipalities from discharging non-conforming wastes. Legislation would be necessary to provide an agency with the power to cut off a municipality's waste treatment privleges.

4.0 BIBLIOGRAPHY

1. Juergensmeyer, The Tennessee Water Quality Control Act of 1971 -- A Significant New Environmental Statute, 52 Vand L. Rev. 323 (1972).

2. Tenn. Dept. of Pub. Health, General Regulations of Tennessee Water Quality Control Board (Feb. 1, 1972).

3. N. Hines, Public Regulation of Water Quality in the United States, (1971).

FOOTNOTES

1. Tenn. Code Ann. 70-328(a), (c) (Supp. 1972).
2. Tenn. Code Ann. 70-329, 70-330(b) (Supp. 1972).
3. Tenn. Code Ann. 70-329(n) (Supp. 1972).
4. Tenn. Code Ann. 53-2002 (1966).
5. Tenn. Code Ann. 70-328(f) (Supp. 1972). See Juergensmeyer, The Tennessee Water Quality Control Act of 1971 -- A Significant New Environmental Statute, 25 Vand. L. Rev. 323, 327 (1972).
6. Tenn. Code Ann. 70-327 (Supp. 1972).

7. Tenn. Code Ann. 5-1601 et seq., 6-1401 et seq., (1971).
8. Tenn. Code Ann. §§5-1607, 6-1404 to 07 (1971).
9. Tenn. Code Ann. §§5-1601, 6-1408 (1971).
10. Tenn. Code Ann. §70-329(i) (Supp. 1972).
11. Tenn. Code Ann. §§5-1609, 6-1421 (1971).
12. Tenn. Code Ann. §6-1421 (1971).
13. Tenn. Code Ann. §5-1609 (1971).
14. Tenn. Code Ann. §§5-1104, 5-1112 (1971).
15. Tenn. Code Ann. §§5-1024, 5-1025 (1971).
16. Tenn. Code Ann. §§6-1309, 6-1427 (1971).
17. Tenn. Code Ann. §5-1606 (1971).
18. Tenn. Code Ann. §6-1404 to 1407 (1971).
19. Tenn. Code Ann. §5-1606 (1971).
20. Tenn. Code Ann. §§6-1102(d), 6-1403(1) (1971).

REGION V

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

ILLINOIS REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Water pollution control in Illinois has recently been reorganized and consolidated by the Illinois Environmental Protection Act of 1970[1] (hereinafter known as the Illinois Act). Control remains within the executive branch, but is now divided among three distinct bodies which cooperate and compete with each other viz a viz the power and duty to enforce pollution control laws and regulations.[2] The three bodies are:

1. Pollution Control Board (the Board);[3]

2. Illinois Environmental Protection Agency (Illinois EPA);[4]

3. The Illinois Institute for Environmental Quality.[5]

The Board consists of five members who are appointed by the governor with the advice and consent of the Senate.[6] All Board meetings are open to the public and, according to the Illinois Act, it has the following powers and duties:

1. adopt rules and regulations necessary for the implementation of the Illinois Act,[7]

2. hearing and adjudication authority on complaints charging violations,[8]

3. prescribe standards for issuance of permits for construction, installation, or operation of sewage treatment facilities,[9]

4. adopt, waste treatment facility performance standards,[10]

5. prescribe standards for the definition and certification of the technical competency of operation personnel for sewage works,[11]

6. authority to act for the State in regard to the adoption of standards for submission to the United States under any federal law respecting environmental protection.[12]

The Illinois EPA is composed of the previous divisions of sanitary engineering and laboratories within the Department of Public Health.[13] The Illinois EPA is headed by its Director who is appointed by the Governor with the consent of the Senate.[14] Its primary responsibilities are as follows:

1. surveillance of water quality and investigation of violations of rules and standards;

2. prosecute enforcement cases before the Board;

3. issuance of permits for wastewater treatment works;

4. administer and give grants of federal and state funds to communities to build wastewater treatment works;

5. inititate rule-making hearings before the Board and recommend standards;

6. designee as the water pollution agency for the state for all purposes of the Federal Water Pollution Control Act, as amended, and is authorized totake all action necessary or appropriate to secure to the State the benefits of such act.[15]

The Illinois Institute for Environmental Quality is the third branch of this system and is headed by a Director who is appointed by the Governor.[16] Its primary duties are to conduct long range planning and applied research and as the Illinois Act states:

> It shall be the duty of the Institute to investigate practical problems and implement studies and programs relating to the technology and administration of environmental protection, to obtain, store, and process relevant data, and to recommend technological, administrative, and legislative changes and developments respecting environmental quality and re-cycling, reuse and conservation of natural resources and solid wastes.[17]

The instutite plans to do scientific, economic , legal and engineering research, as well as urban and rural land use and waste management planning.[18]

Enforcement is the primary responsibility of the Illinois EPA, which prosecutes cases before the Board.[19] However, the State's Attorney General, as well as any of the state's attorneys, may also assume this role and may prosecute polluters either before the Board or in Circuit courts.[20] Private citizens may also institute actions before the Board or in the lower courts. The latter action was recently guaranteed by an amendment to the Illinois Constitution which grants everyone standing in the lower courts to sue anyone -- public or private -- to protect his individual right to a "healthful environment."[21] Appeals from Board decisions are made in the Illinois appellate court upon the basis of the Board's record, and the Attorney General represents the Board in appellate court.[22]

Management authority is generally atomized and is controlled and carried out at the local level. Municipalities may control their own local system,[23] two or more cities may acquire and jointly operate sewage disposal systems,[24] sanitary districts may be incorporated to carry out this function,[25] or it can be performed by the county boards with service extending throughout the county.[26]

There are various types of sanitary districts. Two are specifically created by statute, and they are the Chicago Sanitary District[27] and the North Shore Sanitary District.[28] There are four other types of sanitary districts which may be formed in Illinois, and for the purposes of this report they will be called type I, type II, type III and type IV sanitary districts.

Type I sanitary districts may be formed as follows:

> Whenever any area of contiguous territory within the limits of two counties, having within its limits two or more incorporated cities or villages, and an aggregate population of not less than 3,500 inhabitants, shall be so situate as to be subject to overflow from any river or tributary thereof, and the maintenance of one or more levees for the protection of the same against such overflow, and of a new and improved outlet for the drainage thereof, will conduce to the preservation of the public health and safety. The same may be incorporated as a sanitary district.[29]

Type II sanitary district may be formed as follows:

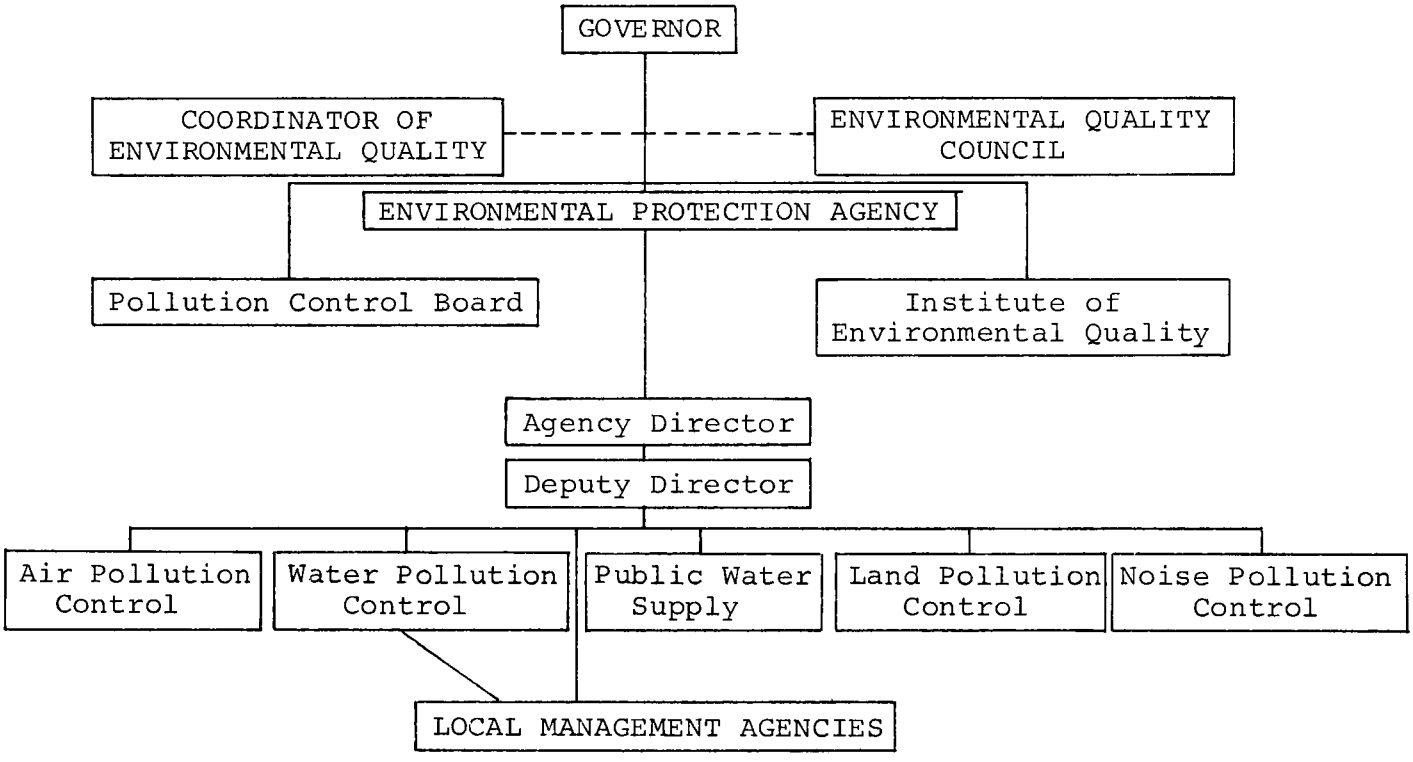
> Whenever any area of contiguous territory shall contain one or more incorporated cities, towns or villages or parts of one or more incorporated cities, towns or villages, and shall be so situated that the construction and maintenance of a plant or plants for the purification and treatment of sewage and the maintenance of one or more outlets for the drainage thereof, after having been so treated and purified by and through such plant or plants will conduce to the preservation of the public health, comfort and convenience, the same may be incorporated as a sanitary district.[30]

Type III sanitary districts comprise areas having a population of less than 500,000 inhabitants.[31]

Type IV sanitary districts are regulated by the "Sanitary District Act of 1936"[32] and may be organized within any area of contiguous territory within the limits of a single county and without the limits of any city, village or incorporated town.[33]

1.2 Schematic Diagram of Existing Agencies

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by any Areawide Plan. [§208(c)(2)(C)].

All of the management agencies under consideration possess the express statutory authority needed to assure compliance with this provision.[34]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

None of the local management agencies possess the express statutory authority to accept and utilize grants, or other funds from any source. However, the Illinois EPA is vested with the express authority to accept, receive and administer on behalf of the State any grants, gifts, loans or other funds made available to the state from any source for the purposes of water pollution control.[35]

2.3 Authority to Raise Revenues, including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All management agencies possess the authority to raise revenues for the purpose of operating and maintaining such works.[36] Such revenue raising plans may include, but are not limited to, taxing by ordinance and the issuance of special assessments against benefited property.[37]

2.3.1 Each Category of User will pay Its Proportionate Share of the Costs of Operation and Maintenance (including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

In Illinois, none of the local management agencies are directed or required to base their system of rates and charges on such characteristics s volume, composition or delivery flow rate of effluent disc. rged by users. The statutes merely require, in most instances, that the agency levy charges sufficient to

pay the costs of operation and maintenance. Such charges are to be established either by contract or by ordinance, and the statutes envision that rates established by ordinance will be a straight tax charged to all users.[38] The only other guidance or limitation placed upon agencies in this regard is that type II sanitary districts and the North Short Sanitary District are directed to establish rates which are fair and reasonable.[39]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

In providing for the disposal of industrial wastes, whether such industrial sewage is disposed of separately or in combination with other sewage, types II, III and IV sanitary districts as well as the North Shore Sanitary District, have the express statutory power to apportion and collect from the producer thereof, fair additional costs for construction over and above those covered by normal taxes (rates and charges).[40] This would assure these agencies the power to comply with the requirements of this provision.

Municipalities, county boards, type I sanitary districts and the Chicago Sanitary District lack express statutory power in this regard, and, unless it could be assumed from their powers of contract, or from their authority to establish rules and regulations, they probably lack the authority needed to assure compliance with this provision.

It should also be pointed out that the Illinois EPA could exercise control in this respect by making it a required element of each local agency's plan and could withhold the needed operating permit until compliance with this provision were assured.[41]

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All management authorities have express statutory authority to finance construction projects in this manner.

2.4.1 General Obligation Funding

County boards are authorized to issue general obligation bonds to fund the building of sewage treatment works.[42] The board may submit such bond issue for voter approval, but it is not required to do so.[43]

Types, I, II and IV sanitary districts may issue such bonds in an amount up to five percent (5%) of the assessed valuation of the taxable property involved in the area for a period not to exceed 20 years.[44] When such bonds are issued the management authority must establish an annual tax sufficient to pay the interest and principal due.[45] Before issuing such bonds, an election must be held in which a majority of the votes cast are in approval of such issuance.[46]

The North Shore Sanitary District is authorized to issue such bonds upon receiving voter approval.[47] Such bonds may not amount to more than five percent (5%) of the taxable property within the area and may be payable for a period not to exceed twenty years.[48] When such bonds are issued the board of trustees must establish an annual tax sufficient to pay the principal and interest when due.[49]

The Chicago Sanitary District may issue twenty year general obligation bonds up to the amount of five percent of the assessed valuation of taxable property in the area[50] without any general requirement of seeking voter approval.[51] Such bonds may bear interest at a rate not exceeding six percent (6%) per annum[52] and the district is required to establish a tax sufficient to pay interest and principal when due.[53]

Municipalities and type III sanitary districts are not authorized to issue general obligation bonds.

2.4.2 Special Funds and Revenue Funding.

Municipalities, county boards, type III sanitary districts and the Chicago Sanitary District are all authorized to issue revenue bonds which may bear interest at not more than six percent (6%) per annum[54] and may be outstanding for up to forty (40) years.[55] In each such instance a sinking fund must be established to assure payment of interest and principal when due.

The North Shore Sanitary District and types I, II, and IV sanitary districts are not expressly authorized to issue revenue bonds.

2.4.3 Other Methods of Financing.

County boards and all types of sanitary districts are authorized to refund bonds if necessary.[56]

Municipalities and type III sanitary districts are authorized to borrow money from any source for the purpose of extending, constructing or improving a sewerage system.[57]

2.5 Authority to Assure in Implementation of its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

None of the agencies under consideration are specifically required by statute to assure that each participating community pay its proportionate share of treatment costs. However, in each instance where two or more communities are employing the same facilities said charges of each are established by contract and one may assume that compliance will be assured in this manner.[58]

It is also possible that the Illinois EPA could assure compliance with this provision through its permit issuing powers.

2.6 Authority to Refuse to Receive any Wastes from Any Municipality or Subdivision Thereof, which does Not Comply with Any Provisions of An Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

The Chicago Sanitary District, the North Shore Sanitary District, type I sanitary districts and type II sanitary districts appear to possess the statutory authority needed to assure compliance with this provision. This power emanates from the following statutory provision:

> Where any sewer system under the jurisdiction of a city, village or incorporated town is tributary to such a sanitary district sewer system, and the board of trustees of such sanitary district finds that it will conduce to the public health, comfort or convenience, the board shall have the power and authority to regulate, limit, extend, deny or otherwise control any connection to such sewer tributary to the sanitary district sewer system by any person or municipal corporation regardless of whether the sewer into which the connection is made is directly under the jurisdiction of the district or not.[59]

County boards have the authority to discontinue sewerage service for non-payment of sewer charges[60] but probably cannot do so for noncompliance with the areawide plan without more specific statutory authorization.

None of the other local management agencies under consideration have any statutory authorization in this regard and probably cannot invoke such a severe sanction without such express authorization.

The Illinois EPA may be able to assure compliance with this provision through its rule and regulation making powers, but it is speculative in the absence of express statutory authorization.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

All of the management agencies under consideration possess either the express or implied (via their powers of contract) power to perform this function.[61]

Additionally, the Illinois EPA would be able to fulfill this function through its permit issuing power.

2.6.2 Authority to Assess Penalties, Surcharges And Similar Sanctions Against Municipalities or Subdivisions thereof which do not Comply with the Areawide Plan.

Municipalities and type III sanitary districts both lack any specific powers in this regard.

County boards may assess a penalty for failure to pay charges when due except for those due pursuant to contract.[62]

All of the other sanitary districts -- with the exception of the Chicago Sanitary District and type III sanitary districts -- have the express statutory authority to invoke fines and possible even imprisonment for the violation of a sanitary district order or resolution.[63]

Violation of the Chicago Sanitary District Act or failure to comply with an order of the board of trustees may result in the assessment of a fine.[64]

It should also be noted that any person who violates any provision of the Illinois Environmental Protection Act, or any regulation adopted by the board or who violates any determination or order of the board pursuant to the act may be penalized by imposition of a fine.[65]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

All of the management agencies under consideration are vested with the express statutory authority needed to assure compliance with the requirements of this provision.[66]

3.0 SUMMARY

Overall, the Illinois management agencies are endowed with the majority of the powers needed to assure compliance with the Act.

The most troublesome aspect of the Illinois statutes regarding agency powers is the fact that each of the various agencies is governed by a separate statutory authorization. No agency is totally capable of complying with the requirements of the Act, and to complicate matters further the various agencies are often lacking in differing respects.

The cause of this patent ambiguity can easily be remedied by the Illinois legislature. The obvious suggestion would be to enact a uniform statute governing the operation of all waste-water treatment agencies. Such legislation should draw upon the existing powers strewn among the various agencies and should clearly make such other additions as would be necessary to assure that all management agencies can comply with the requirements of the Act.

After passage of such a uniform statute the legislature should take care to repeal all pre-existing legislation of this type as it would then be unneeded and would remain only to add confusion.

3.1 Deficiencies

All local agencies lack express legislative authorization to accept and utilize grants and other funds from any source, and legislation would be helpful in this respect. (2.2).

None of the agencies are specifically required or even directed to base treatment charges on such characteristics as strength, composition or quality of effluent, and, as the Act envisions, legislation establishing such a charging scheme would be helpful to assure compliance in this respect. (2.3.1).

Municipalities, county boards, type I sanitary districts and the Chicago Sanitary District all lack the express power to require that full recovery of the federal share of construction costs attributable to industrial users will be had from such users. Since the federal act requires this, legislation would be helpful to assure compliance. (2.3.2).

Municipalities and type III sanitary districts are not authorized to issue general obligation bonds. (2.4.1).

The North Shore Sanitary District and types I, II, and IV sanitary districts lack the authority to issue revenue bonds. (2.4.2).

There is no express legislation requiring that participating communities each pay their proportionate share of waste treatment costs of a jointly used system, and legislation would be helpful to assure compliance. (2.5).

Municipalities, county boards and types III and IV sanitary districts lack the express statutory authority to refuse to receive any wastes from any municipality which does not comply with any provisions of the areawide plan. (2.6).

4.0 BIBLIOGRAPHY

1. Bowe, William J., Regional Planning Versus Decentralized Land-Use Controls; Zoning for Megolopolis, 18 De Paul L. Rev. 144 (1968).

2. Currie, David P., Chairman, The Pollution Control Board: A First Report. Chicago, Illinois, January 6, 1971.

3. Dean, Illinois Environmental News: Legislation, Litigation, and Administrative Proceedings. (A newsletter published weekly by a private group of environmentally-concerned citizens., 934 East 56th Street, Chicago, Illinois 60637).

4. Dobbins, Municipal Storm Drainage, 1960 Law Forum 294 (1960).

5. Feldman, Lake Diversion Case: End of cycle, 49 Chi. Bar. Rec. 270 (1968).

6. Graham, Pollution and the Law in Illinois, 52 Chi. Bar. Rec. 205 (Jan. 1971).

7. Illinois Environmental Protection Agency, Activity Report. A report of the Agency's activities for July - November 30, 1970. Springfield, Illinois, November 30, 1970.

8. Pollution Control Board, Newsletter. (A newsletter of the Board's activities, published every two weeks, beginning July 27, 1970, Chicago, Illinois).

9. State of Illinois Environmental Protection Agency, State and Federal Program Information Concerning Local Sewage Treatment Facilities (unpublished booklet furnished by IEPA, 1972).

FOOTNOTES

1. P.A. 76-2429, 1970; Illinois Statutes Annotated ch. 111 1/2 §1001 et seq.
2. Haskell, E.H., Managing the Environment: Nine States Look for New Answers, 69 (1971).
3. Ill. Stat. Ann. ch. 111 1/2 §1005.
4. Ill. Stat. Ann. ch. 111 1/2 §1004.
5. Ill. Stat. Ann. ch. 111 1/2 §1006.
6. Ill. Stat. Ann. ch. 111 1/2 §1005(a).
7. Ill. Stat. Ann. ch. 111 1/2 §1005, 1013.
8. Ill. Stat. Ann. ch. 111 1/2 §1005(d).
9. Ill. Stat. Ann. ch. 111 1/2 §1013.
10. Ill. Stat. Ann. ch. 111 1/2 §1012, 1013.
11. Ill. Stat. Ann. ch. 111 1/2 §1013.
12. Ill. Stat. Ann. ch. 111 1/2 §1005(c).
13. Haske.., note 2 supra, at 69.
14. Ill. Stat. Ann. ch. 111 1/2 §1004(a).
15. Ill. Stat. Ann. ch. 111 1/2 §1004.
16. Ill. Stat. Ann. ch. 111 1/2 §1006.
17. Id.
18. Haskell, note 2 supra, at 83.
19. Ill. Stat. Ann. ch. 111 1/2 §1004(e).
20. Ill. Stat. Ann. ch. 111 1/2 §§1042, 1043.
21. Illinois Constitution, Art. XI, §2.
22. Ill. Stat. Ann. ch. 111 1/2 §1041.
23. Ill. Stat. Ann. ch. 24 §§11-141-1 et seq., 1-1-2(1).
24. Ill. Stat. Ann. ch. 24 §§11-136-1 et seq., 11-147-1.
25. See notes infra.
26. Ill. Stat. Ann. ch. 34 §3111 et seq.
27. Ill. Stat. Ann. ch. 42 §320 et seq.
28. Ill. Stat. Ann. ch. 42 §276.99 et seq. The "North Shore Sanitary District Act" states that:

> That whenever any area of contiguous territory within the limits of a single county shall contain two or more incorporated cities, towns or villages owning and operating, either or any of them, a system or systems of water works and procuring a supply of water from Lake Michigan, and shall be so situated that the construction and maintenance of a common plant for the purification and treatment of sewage, and the maintenance of a common outlet for the drainage thereof will conduce to the preservation of the public health, the same may be incorporated as a sanitary district under this act.

at §277.

29. Ill. Stat. Ann. ch. 42 §247.
30. Ill. Stat. Ann. ch. 42 §299.
31. Ill. Stat. Ann. ch. 42 §319.1 et seq.
32. Ill. Stat. Ann. ch. 42 §411.99.
33. Ill. Stat. Ann. ch. 42 §412(a).
34. Municipalities, ch. 24 §§11-141-2, 11-141-11; county boards, ch. 34 §§3111, 3112; type I sanitary districts, ch. 42 §260; type II sanitary districts, ch. 42 §§306, 306.1; type III sanitary districts, ch. 42 §319.2; type IV sanitary districts, ch. 42 §§418, 419; North Shore Sanitary District, ch. 42 §283; Chicago Sanitary District ch. 42 §326.
35. Ill. Stat. Ann. ch. 111 1/2 §1004(l). See also, ch. 111 1/2 §1004(m).
36. Municipalities, ch. 24 §§11-141-7, 11-141-7, 11-141-16, 11-142-3, 11-143-1, 11-143-2, 11-145-1; county boards, ch. 34 §§3111, 3121, 3122; sanitary districts, ch. 42 §§260, 306, 311, 317a, 319.7, 427, 283.1, 286, 288, 296.1, 326, 329e.
37. Municipalities, ch. 24 §11-142-1; county boards, ch. 34 §§3111, 3121; type I sanitary districts, ch. 42 §260; type II sanitary districts, ch. 42 §306; type III sanitary districts, ch. 42 §319.7; type IV sanitary districts, ch. 42 §427; North Shore Sanitary District, ch. 42 §283.1; Chicago Sanitary District, ch. 42 §326.
38. Id.
39. Type II Sanitary districts, ch. 42 §306; North Shore Sanitary Districts, ch. 42 §2k3.1.
40. Type II sanitary districts, ch. 42 §306; type III sanitary districts, ch. 42 §319.2; type IV sanitary districts, ch. 42 §420; North Shore Sanitary Districts, ch. 42 §283.1.
41. Ill. Stat. Ann. ch. 111 1/2 §§1004(h), 1012.
42. Ill. Stat. Ann. ch. 34 §3123.
43. Ill. Stat. Ann. ch. 34 §306.
44. Ill. Stat. Ann. ch. 42 §§262, 308, 422.
45. Ill. Stat. Ann. ch. 42 §§262, 309, 422.
46. Ill. Stat. Ann. ch. 42 §§262.1, 308, 422.
47. Ill. Stat. Ann. ch. 42 §§285, 296.3.
48. Ill. Stat. Ann. ch. 42 §285.
49. Ill. Stat. Ann. ch. 42 §286.
50. Ill. Stat. Ann. ch. 42 §§328, 328b, 328c, 329.
51. Ill. Stat. Ann. ch. 42 §§328.6a, 328.8.
52. Ill. Stat. Ann. ch. 42 §§328, 328b, 328c.

53. Ill. Stat. Ann. ch. 42 §329.
54. Municipalities, ch. 24 §11-141-2; county boards, ch. 34 §3119; type II sanitary districts, ch. 42 §319.2; Chicago Sanitary District, ch. 42 §329a.
55. Ill. Stat. Ann. ch. 24 §§11-141-6, 11-141-18; ch. 34 §3120; ch. 42 §319.6; ch. 42 §329g.
56. Ill. Stat. Ann. ch. 34 §3117, ch. 42 §§291.1, 291.8, 391.3, 328.6.
57. Ill. Stat. Ann. ch. 24 §11-141-2, ch. 42 §319.2.
58. Ill. Stat. Ann. ch. 24 §§11-141-7, 11-147-1, 11-147-3; ch. 34 §3111; ch. 42 §§260, 306, 319.11, 319.12, 319.13, 418, 423(b), 443, 283.1, 326d, 329a, 347.
59. Chicago Sanitary District, ch. 42 §326f; the North Shore Sanitary District, ch. 42 §283.2; type I sanitary districts, ch. 42 §260.1; type II sanitary districts, ch. 42 §306.2.
60. Ill. Stat. Ann. ch. 34 §3122.
61. Municipalities, ch. 24 §§11-141-2, 11-141-7, 11-147-1; county boards, ch. 34 §§3111, 3122; type I sanitary districts, ch. 42 §§260.1, 260.4; type II sanitary districts, ch. 42 §§306.2, 306.4; type III sanitary districts, ch. 42 §§319.2, 319.7, 319.12, 319.17; type IV sanitary districts, ch. 42 §§436a, 443a; North Shore Sanitary District, ch. 42 §§283, 283.2, 283.4, 296.6; Chicago Sanitary District, ch. 42 §326f.
62. Ill. Stat. Ann. ch. 34 §3122.
63. Type I sanitary districts, ch. 42 §§255, 258.1; type II sanitary districts, ch. 42 §§383, 305.1; type IV sanitary districts, ch. 42 §§416, 417.1; North Shore Sanitary District, ch. 42 §§280, 282.1.
64. Ill. Stat. Ann. ch. 42 §§326bb(13), 326f. See also, Chicago Allis Mfg. Corp. et al. v. The Metropolitan Sanitary District of Greater Chicago 288 N.E. 2d436(1972); wherein the Illinois Supreme Court held that it was within the statutory authority of the Chicago Sanitary District to assess a surcharge against an industrial user of its waste treatment facilities which discharged an amount of industrial waste into its waste treatment system in excess of an amount established by district regulation.
65. Ill. Stat. Ann. ch. 11 1/2 §§1042, 1044.
66. Municipalities, ch. 24 §§11-141-1, 11-141-2; county boards, ch. 34 §3111; type I sanitary districts; ch. 42 §260; type II sanitary districts, ch. 42 §306; type III sanitary districts, ch. 42 §319.2; type IV sanitary districts, ch. 42 §420; the North Shore Sanitary District, ch. 42 §283.1; the Chicago Sanitary District, ch. 42 §326a.

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INDIANA REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Until 1971, Indiana's primary statewide pollution control agency was an administrative board known as "The Stream Pollution Control Board of the State of Indiana." Its jurisdiction has been modified somewhat by the "Indiana Environmental Management Board,"[1] which is now in control of the establishment of priorities and coordination of the functions and services of both the Stream Pollution Control Board and the Air Pollution Control Board.

The Stream Pollution Control Board continues, however to "exercise all powers, and perform all duties now imposed upon them in the same manner as prior to the enactment of this article (PL 100), except as their powers and duties are modified by this article."[2] The Stream Pollution Control Board has been designated as the Indiana State Pollution Control Agency for all purposes of the Federal Water Pollution Control Act, as amended.[3]

As the primary statewide pollution control agency, the Indiana Environmental Management Board (hereinafter called "The Board") has certain enumerated duties,[4] and powers.[5] The Board is charged with adopting environmental standards and developing regulations concerning the same,[6] and must approve Stream Pollution Control Board standards and regulations before they become effective.[7] The Board has the power to investigate alleged violations of its standards,[8] and is vested with enforcement powers.[9] It may also issue certain orders after conducting the requisite hearings.[10]

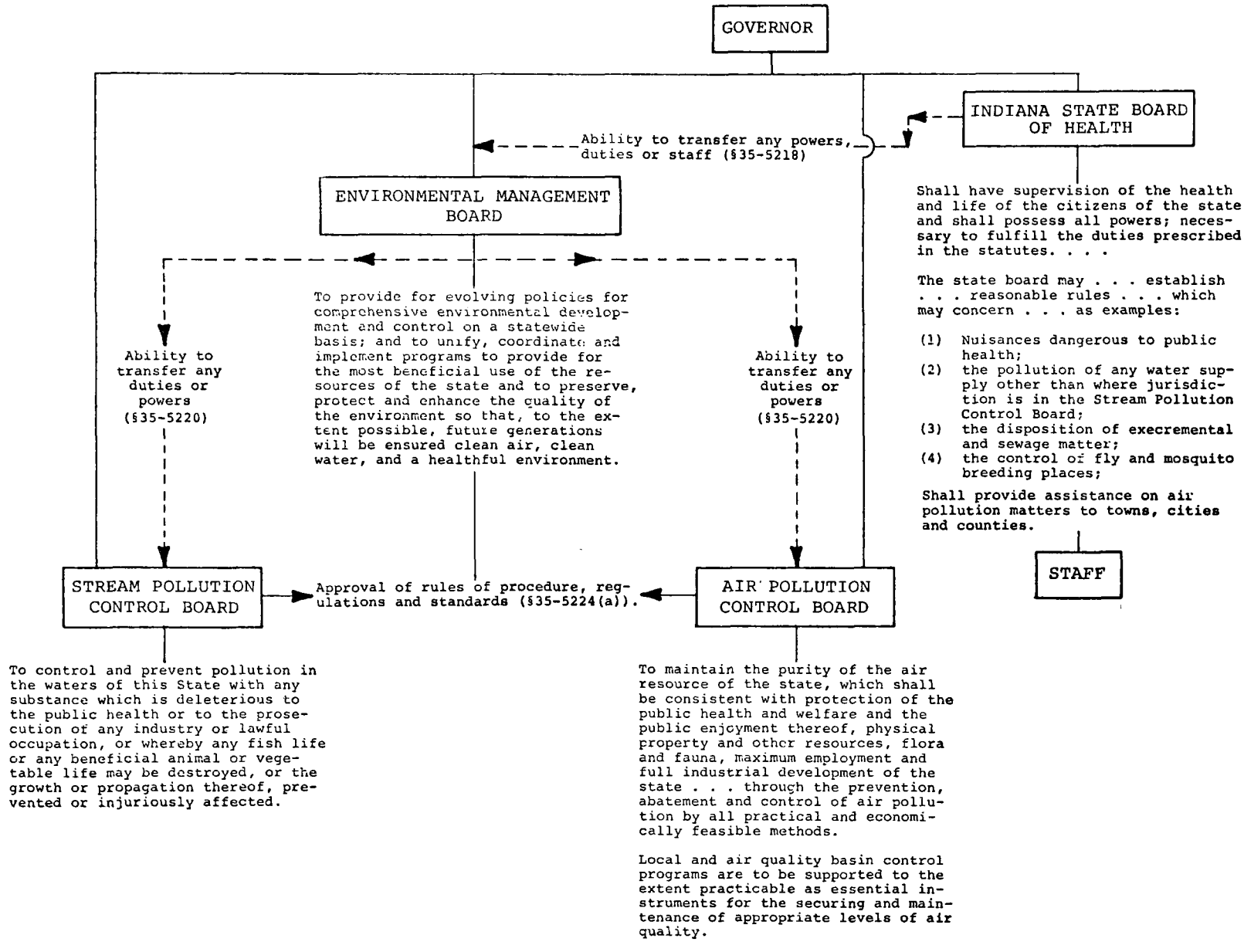
One additional power of the Board is that "no person shall construct, install, operate, conduct or modify any equipment or facility of any type which may cause or contribute to pollution or which may be designed to prevent pollution without prior approval of the Board or any appropriate agency."[11] In carrying out this function the Board uses a permit system and is authorized to establish requirements concerning the same.[12]

Construction and operation of waste treatment facilities are local functions exercised by conservancy districts, regional

sewage districts and by cities and towns. Additionally, cities and towns have various statutory options relating to sewage treatment facilities.

When considering the authority, or ability, of waste water management agencies to accept and utilize grants, or other funds from any source, for waste treatment management purposes, note also that the Indiana Environmental Management Board has the power to "accept and receive . . . any gifts or other funds made available to the state from any source for . . . water pollution control, or other environmental protection activities, surveys or programs . . ."[13]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Conservancy districts may be created for these purposes and have the requisite powers.[14]

Any area in the state may be organized as a regional water and/or sewage district and as such has the authority to provide for the collection, treatment and disposal of sewage within and without the district.[15]

Regional sewage districts have the authority to construct, operate and maintain sewage treatment facilities.[16]

Each city and town in Indiana may own, acquire, construct, equip, improve and maintain new and existing works.[17]

In addition, certain specific types of cities and towns have optional powers available to them. First class cities, as defined,[18] may establish sanitary districts[19] which are run by the Board of Sanitary Commissioners of the Department of Public Sanitation in any city of the first class.[20]

Cities of the second class, as defined,[21] shall have the same powers and duties, viz a viz sewage treatment facilities, as cities of the first class when such cities of the second class so provide by ordinance.[22] The one major exception to this general grant of powers to cities of the second class is in their bonding powers. They may issue bonds of the sanitary district, "payable by special taxation . . . in an aggregate amount not to exceed two percent (2%) of the total assessed valuation . . . of the property within said district.[23]

Any city or town in counties containing a population of not fewer than 450,000 and not more than 600,000 according to the most recent federal dicennial census, may also attain such authority if such city or town shall by ordinance adopt the provisions of such statutes.[24]

Cities operating under the city manager plan of government

may also acquire this authority when such a city shall adopt the provisions of such statutes by ordinance,[25] except that bond issues of such sanitary districts are limited to one percent (1%) of the total assessed valuation (after deducting all mortgage exemptions) of the property within said sanitary districts.[26]

Cities of the first class are granted the authority to construct, operate and maintain sewage treatment works.[27]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Conservancy districts have this authority.[28] In regional districts the funds to finance the construction of any of the self-liquidating works authorized by the provisions of this chapter may be obtained from any agency of the United States or the state of Indiana.[29] It may also acquire real or personal property by donation.[30]

With cities and towns the funds to finance the whole or any part of the cost of the works or any improvement, enlargement or extension of the works may be obtained by grant or loan from the United States government or any agency thereof,[31] or the state of Indiana.[32]

There is no specific provision relating to this for first class cities.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All management agencies have specific statutory authority to raise revenues via assessment of waste treatment charges.

In conservancy districts, the district may establish waste treatment charges that are "just and equitable."[33]

In regional sewage districts, "the board of trustees of the district shall, by ordinance, establish just and equitable rates or charges for the use of, and the service rendered by, a works."[34]

In cities and towns, each city or town "shall establish just and equitable rates or charges for its sewerage service."[35] Such "rates or charges may be fixed" on the basis of a flat

charge for each sewer connection, the amount of water used on the premises, the number and size of water outlets on the premises, the amount, strength or character of sewage discharged into the sewers, size of sewer connections or any combination of these or other factors as the common council or board of town trustees determine is necessary in order to establish just and equitable rates or charges.[36]

Districts created by first class cities have "special taxing powers,"[37] additional tax levying powers[38] and are also charged with the power to prepare a schedule of reasonable service charges.[39] The board also has the explicit authority to make assessments against specific property for special benefits.[40]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

All management agencies have either express statutory authority to do this or are endowed with certain general statutory powers in this regard from which it can be legally inferred that such authority exists.

In conservancy districts the schedule of rates may be based on either amount or character of effluent discharged or both so long as the rates are just and equitable.[41] From this it may be concluded that each category of user can be required to pay its appropriate share.

In regional sewage districts rates and charges shall produce an income sufficient to maintain the works in sound physical and financial condition to render adequate and efficient service.[42] The rates and charges for services of . . . a sewer system need not be uniform throughout the district or for all users. The Board of Trustees shall have authority to exercise reasonable judgment in adopting different schedules of rates and charges, or making classifications in schedules of rates and charges, based upon variations in the costs of furnishing the services (including capital expenditures required) to various locations within the district, or where there are variations in the number of users within various locations within the district.[43] The rates or charges for a sewage works may be fixed on the basis of a flat charge for each connection, the amount of water used on the premises, the number and size of water outlets on the premises, the amount, strength or

character of sewage discharged into the sewers, the size of sewer connections, whether the property served has been, or will be, required to pay separately for the cost of any of the facilities of the works, or any combination of these or other factors as the Board of Trustees determine is necessary in order to establish just and equitable rates or charges.[44]

In the legislation pertaining to cities and towns the definition of sewage includes industrial waste,[45] and it can be inferred from this that "just and equitable charges" will assure that each category of user will pay its appropriate share. See the discussion of charges in 2.3 supra.

In sanitary districts created by first class cities the board is charged with establishing "just and equitable" rates and charges,[46] and has the authority "to establish and enforce rules governing the furnishing of sewage treatment and disposal service and the payment therefore."[47] It is further provided that the rates and charges for the treatment and disposal of sewage may be fixed and determined on the basis of a flat charge for each sewer connection, the amount of water used on the premises, the number and size of water outlets on the premises, the amount, strength or character of the sewage discharged into the sewers, size of sewer connections or any combination of such factors or such other factors as the Board shall determine to be necessary in order to establish just and equitable rates and charges.[48]

Thus, it appears that each category of user can be required to pay its appropriate share of the costs.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There are no specific statutes in Indiana relating to this provision.

In first class cities rates pertaining to industrial sewage are governed by statute[49] but there is no provision for special recovery of federal costs.

In regional sewage districts it is possible that this could be accomplished via their general charging powers although such action is not explicitly prescribed.[50]

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

Conservancy districts may issue bonds to pay the cost of such works. "The bonds may be issued solely against the revenues expected . . . or against the real property of the district in anticipation of the collection of special benefits taxes. Any bonds issued against the real property of the district may be paid in part by revenues derived from reasonable charges for services or property produced incident to the operation of the district, or may be paid in part from the collection of any assessment for exceptional benefits."[51] The total amount of the bonds issued shall not exceed such cost less funds on hand from the collection of assessments and funds on hand or obligated to the district by the state or the federal government.[52] The maximum interest rate for bonds issued may not exceed seven percent per year.[53]

All other management agencies also possess express statutory authority to incur short- and long-term indebtedness.[54]

2.4.1 General Obligation Funding.

All agencies except regional sewage districts have the authority to employ general obligation funding.[55] Cities and towns may not incur such indebtedness for more than forty years.[56]

In cities of the first class the bonds "do not represent a corporate obligation or indebtedness of a city but shall be and constitute an indebtedness of said sanitary district, as a special taxing district . . ."[57]

In any city of the first or second class whereby sanitary districts issue bonds payable by special taxation for the purpose of constructing sewage treatment facilities the total issue may be equal to but is not to exceed 12 percent of the total assessed valuation (after deducting of mortgage exemptions) of the property within such sanitary district.[58] Similar limitations based on a percentage of total assessed valuation apply to the other agencies.

2.4.2 Special Funds and Revenue Funding.

All management agencies have the express statutory authority to employ a revenue bond method of financing except for first class cities for which there is no express authorization.[59]

In regional sewage districts such bonds "may bear interest at such rate or rates, not exceeding the maximum determined by the Board payable annually or at shorter intervals and shall mature at such time or times as may be determined by ordinance." Temporary revenue bonds and additional revenue bonds may be issued.[60] In addition, when revenue bonds are issued, the Board of Trustees shall, by ordinance, create a sinking fund.[61]

In cities and towns revenue bonds shall bear interest at not more than six percent per annum . . . and shall mature at such time or times as may be determined by ordinance.[62]

In regional sewage districts "the Board of Trustees of a district may secure the revenue bonds by a trust indenture by and between the district and a corporate trustee . . ."[63]

Cities and towns also have the authority to secure revenue bonds by a trust indenture by and between the city or town and a corporate trustee.[64]

2.4.3 Other Methods of Financing.

Conservancy districts are allowed to apply to Federal agencies for long or short term loans if said agency makes loans of this nature.[65] They may borrow money from banks or savings and loan associations licensed to do business in Indiana and issue notes therefore (two-year limit, with an option to renew for two additional years).[66] They are also authorized to establish cumulative improvement funds for financing purposes.[67] Monies for this fund may come from several diverse sources.[68]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

At the outset it should be noted that this requirement is inextricably intertwined with the general charging powers discussed in §2.3, supra. Also, this provision does not apply to the statutory powers of first class cities since there would only be one city involved.

In conservancy districts, cities would probably be considered users in this context and the "just and equitable" rates

requirement[69] would presumably apply. There is no express provision establishing a system whereby districts would bill cities which, in turn, would bill customers, but there is no legal obstacle blocking the use of such an arrangement.

This provision is not expressly provided for in regional sewage districts although it may be inferred from the region's broad grant of charging powers discussed supra.

Cities and towns are authorized to contract to provide sewage treatment for other cities or towns,[70] and the mandate is for "just and equitable rates,"[71] as discussed in 2.3, supra.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of the management agencies have the express statutory authority to do exactly this. However, in regional sewage districts the district may make rules and regulations for the control of the administration and operation of its services.[72] It may enter into any contracts with any person, firm, or corporation, public or private, or any political subdivision or the state or the United States to render services to such contracting party for the collection or treatment of sanitary sewage.[73]

The district shall have the power to require connection to its sewer system of any property producing sewage.[74] The district may refuse the services of its facilities if such rates or other charges are not paid by the user thereof.[75] Thus, particular "users" may be cut off for non-payment and "user" may even include a municipality, but there is no apparent authority to cut off service for failure to comply with the approved areawide plan.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

There is no express statutory authority to do this. However, it is possible that future hook-ups could be denied if rules and regulations are not complied with, although this is not explicitly mentioned.

In addition to statutory authority there are certain regulations relating to this provision in Indiana. A policy prohibiting new sewer connections to overloaded municipal sewage treatment plants was adopted by the Indiana Stream Pollution Control Board January 16, 1973.

Plants operating at or above capacity will not be subject to new sewer connections except when there is a prospect of plant extension and a bond sale or grant is pending for that purpose. Connections from existing sources will be permitted if the effluent will not cause a substantial increase in plant load.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

There are no express statutory provisions relating to these situations although, in regional sewage district "any person, firm or corporation whether a private or public body, which willfully fails to comply with such rules and regulations, shall be liable for damages caused by such failure and for the cost of restoring or replacing any construction damaged or destroyed."[76]

This is also the case in first class cities although a "person delinquent" in the payment of sewer rates is "liable to disconnection from the sewerage system until such rates or charges are fully paid."[77]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

All management agencies in Indiana have the power to accept industrial wastes for treatment. Conservancy districts have this power as the definition of sewage includes "wastes created in industrial establishments."[78] Regional sewage districts are authorized to treat industrial waste.[79] They also have the power "to prohibit or regulate the discharge into the sewers of the district of any liquid or solid waste detrimental to its works and improvements."[80]

Cities and towns have no explicit statutory authorization for this but it may be assumed since the definition of "treatable" sewage includes industrial waste.

In cities of the first class the board has the authority to accept for treatment any industrial wastes which conform to effluent standards and pretreatment standards.[81]

3.0 SUMMARY

For the most part, Indiana's waste water management agencies have the requisite powers needed to be in compliance with the Act. However, certain deficiencies have been noted and some legislation is advisable. The areas in need of legislation to allow for full compliance are noted infra.

3.1 Deficiencies

Local management agencies lack express statutory authority to recover from industrial users the federal portion of capital costs allocable to treatment of their wastes. Specific legislation would be helpful to remedy this situation.

Sanctions should be authorized which would be effective against communities as well as individuals. It should be noted, however, that the Stream Pollution Control Board and the Environmental Management Board have the power to act against communities which are in violation of the state laws.[82]

Certain of the agencies lack total bonding powers and legislation should be forthcoming.

Specific authority to require pretreatment by industrial users should be enacted as some agencies only have this authority by implication and others lack it entirely.

4.0 BIBLIOGRAPHY

1. Abt Report, 1008 Environmental Reporter, BNA Series (December 29, 1972).

2. Waite, G. Granham, Indiana Water Law and Suggestions for Action, Ind. Water Resources Study Commission, 1968.

3. Indiana State Chamber of Commerce, "Here Is Your State Government," (15th ed. 1971), with 1972 Supp.

4. Emerson, G. A. and E. E. Ferguson, Pollution; A Summary of the Law of Indiana (Indiana Legislative Council, Indianapolis, 1972).

FOOTNOTES

1. Ind. Ann. Stat. §35-5201 et seq., (Supp. 1972) See also, Abt Report, cited in Environmental Reporter at 1008, BNA Series (December 29, 1972), which recommended "abolishment of the . . . Stream Pollution Control Board, and transfer of sanctions to the Environmental Management Board created by the 1972 General Assembly."[4]
2. Ind. Ann. Stat. §35-5219(Supp. 1972).
3. Ind. Ann. Stat. §§35-5212(Supp. 1972); 68-536(1961).
4. Ind. Ann. Stat. §35-5213(Supp. 1972).
5. Ind. Ann. Stat. §35-5216(Supp. 1972).
6. Ind. Ann. Stat. §§35-5213(b), -5216(c), -5228(Supp. 1972).
7. Ind. Ann. Stat. §35-5224(b)(Supp. 1972).
8. Ind. Ann. Stat. §35-5240(Supp. 1972).
9. Ind. Ann. Stat. §§35-5216(e), -5241(Supp. 1972).
10. Ind. Ann. Stat. §35-5244(Supp. 1972).
11. Ind. Ann. Stat. §35-5215(f)(Supp. 1972).
12. Ind. Ann. Stat. §§35-5235, -5228(b)(Supp. 1972).
13. Ind. Ann. Stat. §35-5216(g)(Supp. 1972).
14. Ind. Ann. Stat. §§27-1501, -1503, -1548, -1561(1970).
15. Ind. Ann. Stat. §27-2845 et seq.(Supp. 1972).
16. Ind. Ann. Stat. §§27-2852(e), (g), (i)(Supp. 1972).
17. Ind. Ann. Stat. §48-4302 et seq.(Supp. 1972).
18. Ind. Ann. Stat. §48-1201(1963).
19. Ind. Ann. Stat. §48-4201 et seq.(1963).
20. Ind. Ann. Stat. §48-4203(f)(1963).
21. Ind. Ann. Stat. §48-1201(1961).
22. Ind. Ann. Stat. §48-4227(1963).
23. Ind. Ann. Stat. §48-4229(1963).
24. Ind. Ann. Stat. §48-4227(a)(Supp. 1972).
25. Ind. Ann. Stat. §48-4228(1963).
26. Ind. Ann. Stat. §48-4228(g)(1963).
27. Ind. Ann. Stat. §§48-4203(13), (14)(1963).
28. Ind. Ann. Stat. §§27-1549, -1550(1970).
29. Ind. Ann. Stat. §27-2859(Supp. 1972).
30. Ind. Ann. Stat. §27-2852(j)(Supp. 1972).
31. Ind. Ann. Stat. §48-4311(Supp. 1972).
32. Ind. Ann. Stat. §48-4312(Supp. 1972).
33. Ind. Ann. Stat. §§27-1580, -1580(a) to -1580(f)(1970).
34. Ind. Ann. Stat. §27-2867(Supp. 1972).
35. Ind. Ann. Stat. §§48-4319, -4320(Supp. 1972).
36. Id.
37. Ind. Ann. Stat. §48-4209(1963).
38. Ind. Ann. Stat. §48-4231(1963).
39. Ind. Ann. Stat. §48-4203(17)(1963).
40. Ind. Ann. Stat. §48-4203(f)(1963).

41. Ind. Ann. Stat. §27-1580(e)(1970).
42. Ind. Ann. Stat. §27-2867(Supp. 1972).
43. Ind. Ann. Stat. §27-2864(Supp. 1972).
44. Ind. Ann. Stat. §27-2864(Supp. 1972); See also Ind. Ann. Stat. §27-2852(s)(Supp. 1972).
45. Ind. Ann. Stat. §48-4301(a)(Supp. 1972).
46. Ind. Ann. Stat. §48-4219(a)(1963).
47. Id.
48. Ind. Ann. Stat. §48-4219(b)(Supp. 1963); Ind. Ann. Stat. §48-4270(Supp. 1972) amending Ind. Ann. Stat. §48-4270 (1963); See also Ind. Ann. Stat. §48-4266(1963).
49. Ind. Ann. Stat. §48-4269(Supp. 1972) amending Ind. Ann. Stat. §48-4269(1963).
50. See generally Ind. Ann. Stat. §§27-2864, -2867(Supp. 1972).
51. Ind. Ann. Stat. §27-1584(1970).
52. Id.
53. Ind. Ann. Stat. §27-1585(1970).
54. Ind. Ann. Stat. §§27-2857, 48-4310, -4311, -4312, -4313 (Supp. 1972); 48-3906(1963).
55. Ind. Ann. Stat. §§27-1584(1970); 48-3905(1963).
56. Ind. Ann. Stat. §48-3906(1963).
57. Ind. Ann. Stat. §48-4217(Supp. 1972) amending Ind. Ann. Stat. §48-4217(1963).
58. Ind. Ann. Stat. §48-4217(a)(Supp. 1972) amending Ind. Ann. Stat. §48-4217(a)(1963).
59. Ind. Ann. Stat. §§27-1584(1970); 27-2858(Supp. 1972); 48-4311(Supp. 1972).
60. Ind. Ann. Stat. §§27-2859, -2860(Supp. 1972).
61. Ind. Ann. Stat. §27-2862(Supp. 1972).
62. Ind. Ann. Stat. §48-4312(Supp. 1972).
63. Ind. Ann. Stat. §27-2861(Supp. 1972).
64. Ind. Ann. Stat. §48-4315(Supp. 1972).
65. Ind. Ann. Stat. §27-1571(1970).
66. Ind. Ann. Stat. §27-1573(1970).
67. Ind. Ann. Stat. §1590(b)(1970).
68. Ind. Ann. Stat. §1590(c)(1970).
69. Ind. Ann. Stat. §27-1580(d)(b)(1970).
70. Ind. Ann. Stat. §48-4310(Supp. 1972).
71. Ind. Ann. Stat. §§48-4319, -4320(Supp. 1972).
72. Ind. Ann. Stat. §27-2852(Supp. 1972).
73. Ind. Ann. Stat. §27-2852(m)(Supp. 1972).
74. Ind. Ann. Stat. §27-2852(g)(Supp. 1972).
75. Id.
76. Ind. Ann. Stat. §27-2854(Supp. 1972).
77. Ind. Ann. Stat. §48-4276(1963).
78. Ind. Ann. Stat. §27-1580a(e)(1970).

79. Ind. Ann. Stat. §27-2852(m)(Supp. 1972).
80. Ind. Ann. Stat. §27-2854(d)(Supp. 1972).
81. Ind. Ann. Stat. §48-4203(b)(1963); Ind. Ann. Stat. §48-4269(1972); amending Ind. Ann. Stat. §48-4269 (1963); Ind. Ann. Stat. §48-4277(a)(Supp. 1972).
82. Ind. Ann. Stat. §68-521(1961) and §35-5241(Supp. 1972).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

MICHIGAN REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

In Michigan, the Water Resources Commission (WRC) is the agency chiefly responsible for administering and enforcing the state's water pollution control laws.[1] At its inception the legislature charged the WRC with the duty of controlling the pollution of any waters of the state and the Great Lakes. The act has been amended several times with the most significant amendments occurring in 1949,[2] again in 1965,[3] and finally, in 1970, (Michigan's "Truth in Pollution" Act.[4] Each amendment broadened the scope of Michigan's anti-pollution controls and significantly strengthened the WRC's authority and ability to implement the purposes of the act.

The WRC was within the Department of Conservation until 1968 when the legislature created the Department of Natural Resources (DNR)[5] as one of Michigan's twenty "principal" departments.[6] In the process the Department of Conservation was abolished and its memebers became the members of the "new" DNR. As a result, the WRC was transferred by a type I transfer to the DNR.[7] This transfer did not result in any basic change in the authority of the WRC and the only administrative difference is that the commission thus transferred (WRC) is now administered under the supervision of the principle department (DNR). The final administrative alteration occurred in May, 1969, when the WRC's staff was regrouped and its duties expanded via its incorporation into a newly established Bureau of Water Management in the Department of Natural Resources.[8] The Bureau consists of three major divisions: water quality control, hydrological surveys and studies, and water development services. The impact of this is that additional water-oriented activities such as submerged lands management and oil pollution control, which were previously in other divisions, were transferred into these divisions to consolidate related responsibilities. The Bureau is responsible to both the WRC and the Director of the DNR.[9]

Membership on the Commission (WRC) is established by statute and is set at seven. Three members are appointed by the Governor: one each to represent the interest of municipalities, industrial management and conservation groups. The other four

members are state officials serving ex-officio: the Director of the Department of Natural Resources, the Director of the Department of Public Health, the Director of the Department of Agriculture and a representative from the State Highway Commission.[10] The State Health commissioner is in general charge and supervision of the enforcement of the health laws of the state,[11] and apparently, although not specifically detailed by statute, is expected to provide this sort of input for the WRC via his ex-officio membership.

The legislature has declared unlawful pollution to be the direct or indirect discharge into state waters of "any substance which is or may become injurious to the public health, safety or welfare . . .,[12] and has given the WRC permit issuing and rule making authority to establish standards regulating both the quality of receiving waters and the pollution content of any substance discharged into the states waters.[13] The WRC has promulgated a substantial number of rules covering many aspects of water pollution and which may be found in the Michigan Administrative Code.[14]

Anyone detected of failing to comply with the statute, or the WRC's rules or anyone discharging wastes without a permit will be subject to a commission order and, if not voluntarily complied with, the commission will seek a court order to assure compliance.[15] The commission order results from a commission hearing and the alleged offender is granted the opportunity of both administrative and judicial review if so desired.[16] The Michigan statute also provides for criminal action against alleged polluters,[17] and establishes penalties by way of fines if convicted.[18]

Michigan has established a surveillance, investigation and monitoring system[19] which is the tool actually responsible for the success of its water pollution control program.[20] The act works by requiring that:

> every person, doing business within this state discharging waste water to the waters of this state or to any sewer system, which contains wastes in addition to sanitary sewage shall file annually reports on forms provided by the commission setting forth the nature of the enterprise, indicating the quantities of materials used in and incidental to its manufacturing processes and including by-products and waste products, which appear on a register of critical materials as compiled by the commission with the advice of an

> advisory committee of environmental specialists designated by the commission, and the estimated annual total number of gallons of waste water including but not limited to process and cooling water to be discharged to the waters of the state or to any sewer system.[21]

And, any person, company or corporation (but not municipality) discharging any water borne waste directly or indirectly into any waters of the state is required to pay a surveillance fee to the WRC which operates this system.[22]

There is also a certain amount of control vested in the Michigan commissioner of health in that his office exercises supervisory control over public water supplies and sewage disposal systems.[23] Its basic authority is that of review of plans submitted by local agencies and deciding whether such proposed system will be adequate. Its authority in this respect stems from the requirement that local agencies must procure a permit from the commissioner before constructing or operating a sewage treatment system.[24]

Finally, the WRC is further authorized to take such steps as may be necessary to take advantage of any act of Congress heretofore or hereafter enacted which may be of assistance in water pollution control or abatement.[25]

Management of sewage treatment facilities is carried out at the local level and may be conducted by cities,[26] villages,[27] sewage disposal districts,[28] counties[29] and townships.[30] Any two or more cities, villages or townships or any combination or parts thereof, may incorporate into a metropolitan district for such purposes.[31] Also, any two or more counties, townships, charter townships, incorporated cities or incorporated villages may incorporate an authority for such purposes.[32] Finally, any two or more political subdivisions may jointly use or own a treatment system.[33]

1.2 Schematic Diagram of Existing Agencies

BUREAU OF WATER MANAGEMENT

Organization Chart

2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All management agencies in Michigan are vested with the express statutory authority needed to assure compliance with the requirements of this provision.[34]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All management agencies are authorized to apply for and accept grants or any other aid which the United States government or any agency thereof has authorized or may hereafter authorize to be given or made to the several states of the United States or to any political subdivisions or agencies thereof within the states for the construction of public improvements, including all necessary action preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution.[35] They are further authorized to accept contributions and other aid from industries for the purpose of aiding in the prevention or abatement of water pollution.[36]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All management agencies are authorized to establish rates and charges for the use of their sewage treatment facilities and for the services rendered thereby.[37]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

None of the agencies are absolutely required nor even expressly authorized to assure that each category or user will pay its proportionate share of treatment costs. However, they are all authorized to establish rates and charges[38] and this by itself would provide the permissive ability for local agencies to assure compliance. In addition, sewage disposal districts

are required to charge "reasonable" rates;[39] when two or more political subdivisions jointly use a works they are required to charge users "in proportion to the services furnished;"[40] and cities, villages, townships and counties are required to establish "just and equitable" rates.[41]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the local management agencies have the express statutory authorization to provide for this. They could possibly assure compliance through their general powers of contract or their general rule making powers. However, this would only be of limited effectiveness in light of the realities of the bargaining situation and the political pressures that could be brought to bear in certain individual cases.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All local management agencies possess the authority to finance projects in this manner and these powers will be discussed in more detail in the following sections.

2.4.1 General Obligation Funding.

All of the local management agencies -- with the exception that systems owned or used jointly by two or more political subdivisions must be financed individually rather than as a joint enterprize -- have the express statutory authorization to issue general obligation bonds.[42] Such bonds may be left outstanding for up to forty years.[43] In cities, villages, townships and counties approval of such issue is required by a three-fifths vote of the electorate voting in an election held for such purpose.[44] The issue, if approved, may not exceed three percent (3%) of the assessed valuation of property in each such entity.[45] In metropolitan districts such an issue may not exceed two percent (2%) of the assessed valuation of property in such district.[46]

2.4.2 Special Funds and Revenue Funding.

All management agencies are vested with the express statutory authority to finance projects via issuance of revenue bonds.[47] Cities, villages, townships and counties are required to

procure approval by three-fifths of the electorate voting upon the question of whether such bonds should be issued[48] and if approved such bonds may bear interest at a rate not exceeding six percent (6%) per annum.[49] If such bonds are issued a sinking fund must be established and maintained to assure payment for such bonds and interest.[50] Metropolitan districts are also required to establish a sinking fund to cover such bonds and interest therefore.[51]. The interest on these bonds may not exceed six percent (6%) per annum.[52]

2.4.3 Other Methods of Financing.

Michigan has created a fund known as the state water pollution control fund which is used for assisting counties, cities, villages, townships and other public bodies created by a pursuant to state law and having jurisdiction over disposal of sewage or other liquid wastes, in financing their construction of treatment works.[53]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

All management agencies possess either the express or implied authority needed to assure compliance with the requirements of this section of the act.[54]

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisons of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

The local agencies lack express statutory authority in this regard and without it they probably would not be able to assure compliance.

The WRC has a certain degree of control in this respect through its rule making powers in conjunction with the surveillance system. Likewise, the commissioner of health would be able to exert a certain amount of compliance via the permit-issuance authority.

However, in light of the severe sanctions envisioned by the act, it is doubtful that any agency could exert the power required to assure compliance without express statutory authority to do so.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Again, there is no express legislation regarding this requirement but since it involves more of an original contractual privilege rather than a sanction it would probably be within the contractual powers of each agency.

It would probably be within the power of the commissioner of health to do this since it would be part of a permit application procedure.[55]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

None of the local management agencies have any of these powers but there are certain sanctions available against persons who violate the water pollution control laws or rules or regulations of the WRC.[56]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

All management agencies are authorized to enter into contracts and agreements with industries concerning the collection, treatment and disposal of sewage and industrial wastes from industries.[57] Such agreements could reasonably provide for pretreatment of industrial wastes as well.

3.0 SUMMARY

Overall, Michigan's waste water treatment management agencies are sufficiently empowered to comply with most of the provisions of the act. One of the major short-comings noted in the Michigan program is that different agencies are empowered to perform similar authorizations. Many of the authorizations are redundant. In other instances the legislature has apparently attempted to provide one agency with powers possessed by another, but has used different statutory language and has thus created certain statutory ambiguities; in other instances certain agencies possess express powers that other agencies only possess through inference. All of this leads to the recommendation that one new statute be enacted providing uniform and sufficient authority for all agencies to comply with the requirements of the federal act and that all of the old legislation be repealed as it is currently somewhat confusing and would be unnecessary upon passage of the uniform statute.

3.1 Deficiencies

The legislature should enact legislation requiring that full recovery will be had from industrial users of the federal portion of the construction costs of treatment works reasonably attributable to treatment of such industrial wastes in order to assure compliance with this requirement of the act.

It should also grant the local agencies the express authority to refuse to receive any wastes from any municipality or subdivision thereof which does not comply with any provisions of an approved plan since this is an integral requirement of the act. In addition, sanctions should be expressly authorized.

Finally, even though the local agencies could insure that each category of user will pay its proportionate share of the costs of operation maintenance through their general charging powers, legislation would be helpful to require compliance with this provision.

4.0 BIBLIOGRAPHY

1. Gilman, The Executive Organization Act of 1965, 13 Wayne L. Rev. 41 (1966).

2. Haskell, E. H., Managing the Environment: Nine States Look for New Answers, 371-88 (1971).

3. Jackson, Environmental Quality, The Courts and Congress, 68 Mich. L. Rev. 1073 (1970).

4. Purdy, Water Resources Commission in the Michigan Department of Natural Resources Twenty-Fifth Biennial Report 236 (1970).

5. Sax and Conner, Michigan's Environmental Protection Act of 1970: A Progress Report, 70 Mich. L. Rev. 1004 (1972).

6. Sax, Joseph L. Defending the Environment. New York, Knopf, 1970.

7. Sax, Joseph L. An Environment Common Law for Michigan. Law Quadrangle Notes (University of Michigan Law School) 14: 27. 1970.

8. Sax, The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention. 68 Mich. L. Rev. 473 (1970).

9. Thebodeaus, Joseph. Michigan Environmental Protection Act of 1970: Panacea or Pandora's Box. Memorandum to Michigan Legislature reprinted in Congressional Record 116(165): S16246 - S16251. September 22, 1970.

10. Water Resources Commission Staff Paper, Summary of Michigan's Water Pollution Control Act (Act 245, P.A. of 1929, as amended), (unpublished, February 1969).

11. Water Resources Commission Staff Paper, Summary of Michigan's "Truth in Pollution Act", Act 200, P.A. of 1970, (unpublished, September 1970).

FOOTNOTES

1. Michigan Compiled Laws Annotated, §323.1 et seq. (Supp. 1972).
2. P.A. 1949, No. 117.
3. P.A. 1965, No. 328, No. 405.
4. P.A. 1970, No. 200.
5. M.C.L.A. §16.350 (Supp. 1972).
6. Art. 5, §2 Michigan Constitution.
7. M.C.L.A. §16.357. See also, Op. Atty. Gen. 1966, No. 4479 for further enlightenment concerning type I transfers.
8. See Purdy, Water Resources Commission in the Michigan Department of Natural Resources, Twenty-Fifth Biennial Report 236 (1969-70).
9. Id.
10. M.C.L.A. §323.1 (Supp. 1972).
11. M.C.L.A. §325.2 (1967).
12. M.C.L.A. §323.6 (Supp. 1972).
13. M.C.L.A. §323.5 (Supp. 1972).
14. The Code contains rules and regulations and are arranged according to numbered designations corresponding to M.C.L.A. chapter 323.
15. M.C.L.A. §323.7 (Supp. 1972).
16. Id.
17. M.C.L.A. §323.9 (1967).
18. M.C.L.A. §323.10 (Supp. 1972).
19. P.A. 1970, No. 200, M.C.L.A. §§323.6b, 323.13 (Supp. 1972), (better known as Michigan's "Truth in Pollution Act").
20. See Water Resources Commission Staff Paper, Summary of Michigan's "Truth in Pollution" Act of 1970 (unpublished, September 1970), wherein it is stated that this act has significantly improved and strengthened Michigan's water pollution control program and the WRC's administrative and enforcement capabilities.
21. M.C.L.A. §323.6b (Supp. 1972).

22. M.C.L.A. §323.12 (1967).
23. M.C.L.A. §325.201 et seq. (1967).
24. M.C.L.A. §325.206 (1967).
25. M.C.L.A. §323.2a (Supp. 1972). See also, Water Resources Commission Staff Paper, Summary of Michigan's Water Pollution Control Act, (Act 245, P.A. of 1929, as amended), (unpublished, February 1969) wherein the WRC itself states that it perceives its role to be as follows:

Under the provisions of the act, the Water Resources Commission must:

a. control pollution of any surface or underground waters of the state and the Great Lakes,
b. control alterations of natural or present watercourses of all rivers and streams,
c. establish pollution standards for lakes, rivers, streams and other waters of the state as it deems necessary,
d. examine and certify operators of industrial waste treatment facilities discharging liquid wastes, and
e. make orders restricting the polluting content of proposed new or increased uses of state waters for waste disposal purposes.

The Commission has the authority to:

a. make orders, including a performance timetable, requiring abatement of existing pollution problems,
b. seek court enforcement of its orders,
c. determine what volume of water flows in all streams, and the high and low water marks of lakes, affected by waste disposal,
d. make regulations and orders to prevent harmful interference with the discharge and stage characteristics of streams,
e. determine the location and extent of flood plains, stream beds and channels,
f. make surveys, studies and investigations of water use,
g. cooperate and negotiate with other governments and governmental units, and
h. take advantage of any act of congress.

26. M.C.L.A. §§123.201 (1967), 123.241 (Supp. 1972).

27. M.C.L.A. §§123.201 (1967), 67.24 (1967).
28. M.C.L.A. §323.151 et seq. (1967). Sewage disposal districts may be formed by any two or more municipalities. It is accomplished by resolution of their legislative body and by filing a petition with the commission requesting that a sewage district be organized to function in the territory described in the petition. Formation of the district is thereafter left up to the WRC.
29. M.C.L.A. §§123.241 (Supp. 1972), 46.171 (1967).
30. M.C.L.A. §§123.241 (Supp. 1972), 41.331 (1967).
31. M.C.L.A. §119.1 et seq. (1967).
32. M.C.L.A. §§124.282, 124.281(c)(1967).
33. M.C.L.A. §123.231 et seq. (1967).
34. Cities, villages, townships and counties, §§123.241, (Supp. 1972), 123.246 (1967); sewage disposal districts, §§323.158(a), 323.159 (1967); sewage disposal authority, §§124.282, 124.284(e), 124.287 (1967); metropolitan districts, §§119.1, 119.2 (1967); and, 2 or more political subdivisions, jointly, §123.232 (1967).
35. M.C.L.A. §323.102 (1967).
36. M.C.L.A. §323.103 (1967).
37. Sewage disposal districts, §323.159 (1967); cities, villages, townships and counties, §123.243 (1967); sewage disposal authorities, §124.287 (1967); metropolitan districts, §119.4(d)(1967); and, 2 or more political subdivisions, jointly §123.235 (1967).
38. See note 38 id., and the accompanying text.
39. M.C.L.A. §§323.159, 323.160 (1967).
40. M.C.L.A. §123.325 (1967).
41. M.C.L.A. §123.243 (1967).
42. Sewage disposal districts, §343.159(4)(1967); cities, villages, townships and counties, §123.242 (1967); sewage disposal authorities §124.289 (1967); and metropolitan districts, §119.4(b)(1967).
43. E.g., M.C.L.A. §§123.242, 124.289 (1967).
44. M.C.L.A. §123.242 (1967).
45. Id.
45. M.C.L.A. §119.4(b)(1967).
47. Sewage disposal districts, §323.162 (1967); cities, villages, townships and counties, §123.242 (1967); sewage disposal authorities, §124.292 (1967); metropolitan districts, §119.4(b)(1967); two or more political subdivisions, jointly, §123.234 (1967).
48. M.C.L.A. §123.242 (1967).
49. Id.
50. M.C.L.A. §123.244 (1967).
51. M.C.L.A. §119.4(b)(1967).
52. Id.
53. M.C.L.A. §323.111 et seq. (Supp. 1972).

54. M.C.L.A. §123.214. See also, §§323.159, 123.243 (1967), 124.287 (1967), 124.290 (1967), 123.232 (1967), 123.235 (1967).
55. M.C.L.A. §325.206 (1967).
56. M.C.L.A. §§323.9 (1967), 232.10 (Supp. 1972).
57. M.C.L.A. §323.103 (1967).

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MINNESOTA REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

In Minnesota, the state-wide agency in charge of pollution control has been designated as the Minnesota Pollution Control Agency.[1] This agency is the successor of the Water Pollution Control Commission, and, effective May 26, 1967, all powers and duties that were vested in or imposed upon said commission were transferred to, imposed upon, and vested in the Minnesota Pollution Control Agency (Agency).[2] This act also took most related powers still remaining with the State Board of Health and vested them within the Agency.[3]

The Agency is composed of nine members who are appointed by the governor and with the advice and consent of the senate, and who serve four-year terms.[4] The Agency is under the supervision of an executive secretary who is the director of the Agency.[5]

The Agency has the following powers and duties:

> To administer and enforce all laws relating to the pollution of any of the waters of the state;
>
> To investigate the extent, character, and effect of the pollution of the waters of this state and to gather data and information necessary or desirable in the administration or enforcement of pollution laws, and to make such classification of the waters of the state as it may deem advisable;
>
> To establish and alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purposes of water pollution control;
>
> To make and alter reasonable orders requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the state resulting in pollution in excess of the applicable pollution standard established under this subdivision;

> To require to be submitted and to approve plans for disposal systems or any part thereof and to inspect the construction thereof for compliance with the approved plans thereof;
>
> To issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the discharge of sewage, industrial waste or other wastes, or for the installation or operation of disposal systems or parts thereof;
>
> To revoke or modify any permit issued under (its authority) . . . whenever it is necessary, in the opinion of the commission to prevent or abate pollution of any waters of the state;
>
> To conduct such investigations and hold such hearings as it may deem advisable and necessary for the discharge of its duties . . . and to authorize any member, employee, or agent appointed by it to conduct such investigations or hold such hearings.[6]

In granting these powers to the Agency, the legislature has also declared that it shall be unlawful for any person to construct, install or operate a disposal system, or any part thereof, until plans therefore shall have been submitted to the commission unless the commission shall have waived the submission thereof to it and a written permit therefore shall have been granted by the Agency.[7] It is also unlawful for any person to make any change in, addition to or extension of any existing disposal system or part thereof that could materially after the method or the effect of treatment without complying with the permit procedures.[8]

The Agency has the authority to issue emergency orders.[9] An appeal may be taken from any final order, rule, regulation or other final decision of the Agency in the district courts of the state.[10] The act provides for enjoining pollution of any waters in violation of the act.[11] Violation of any provision of the act or of any regulation adopted by the Agency is a misdemeanor.[12]

The Agency is assisted by the Water Pollution Control Advisory Committee in formulating a general statewide comprehensive policy and plans for the prevention, control and abatement of

pollution and in the establishment of standards.[13] The committee is composed of two members from each sanitary region,[14] and each congressional district of the state constitutes a sanitary region for this purpose.[15]

Management agencies responsible for pollution control and sewage treatment are operated at both the local and areawide levels with the choice of organization being left to the citizens of the areas involved.

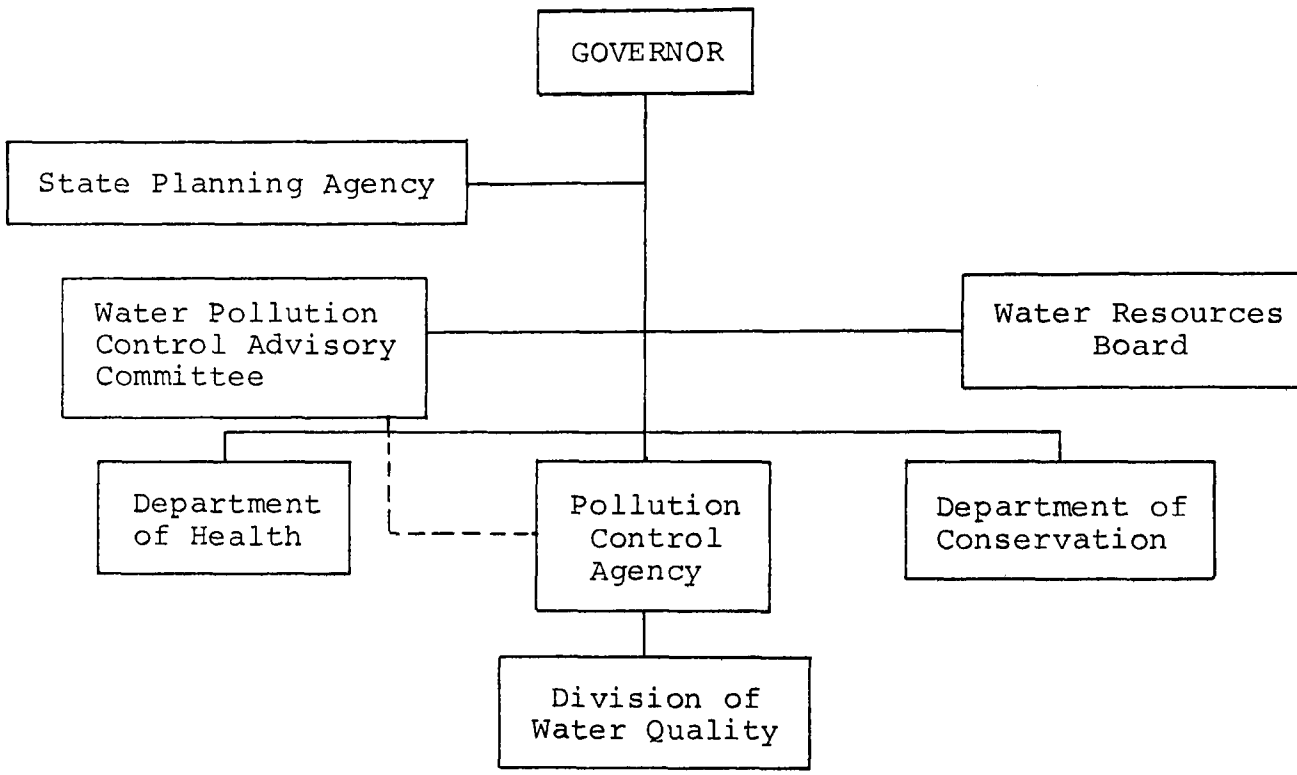
In Minnesota, waste treatment management agencies include: towns,[16] regional sanitary sewer districts,[17] metropolitan sewer service boards[18] and county boards within areas of the county not organized into cities or villages.[19] Any city or village is authorized to manage sewage treatment facilities.[20] Cities of the first class operating under a home rule charter and not embraced within the limits of any sanitary district are authorized to create and manage sewage treatment facilities via special statutory provision.[21] In addition, there are two types of sanitary districts which may be organized for this purpose. The first (type I), may be organized by two or more contiguous cities of the first class which are discharging sewage or industrial wastes, or both, into a common natural watercourse.[22] The second type of sanitary district (type II) may be created for any territory embracing an area or a group of two or more adjacent areas, whether contiguous or separate, but not situated entirely within the limits of a single municipality.[23]

Minnesota is also one of a few states which has recently (1971) passed an Environmental Rights Act. It reads in part:

> The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which man and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.[24]

1.2 Schematic Diagram of Existing Agencies

Minnesota Pollution Control Agency



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208 (c)(2)(C)].

All of the waste water treatment agencies noted in paragraph 1.1 have the express statutory authority needed to assure compliance with this provision of the Act.[25]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Metropolitan sewer service boards,[26] unorganized areas in

counties[27] and type II sanitary districts[28] each have express statutory authority to accept and utilize grants or other funds from the United States, the state, or any person, corporation, or other entity for these purposes.

All other management agencies under discussion lack express statutory authority in this respect. However, the lack of express authority should not preclude compliance with this section, as it would be an implicit power of a management agency in the absence of express statutory language to the contrary.

The Pollution Control Agency also has the authority to receive and accept funds from any source.[29]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All management agencies possess the authority to assess waste treatment charges.[30] These powers will be discussed with more particularity in paragraphs 2.3.1 and 2.3.2.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

All management agencies are vested with charging powers as is noted in Section 2.3, but each has its own independent source of authority and all vary somewhat.

Towns have the authority to levy taxes and special assessments and to do all other things necessary or convenient for the maintenance and operation of a system.[31] From this it can reasonably be implied that towns can comply with this provision.

Both regional sanitary sewer districts and unorganized areas in counties are vested, by statute,[32] with the same powers as cities and villages generally possess in this regard. Such agencies are directed to impose "just and equitable" charges for sewage treatment and the statute further provides:

> Such charges may be imposed with respect to facilities made available by agreement with other municipalities or private corporations or individuals, as well as those owned and operated by the city or village itself.

> Charges made for sewer service directly rendered shall be as nearly as possible proportionate to the cost of furnishing the same, and sewer charges may be fixed on the basis of water consumed, or by reference to a reasonable classification of the types of premises to which service is furnished, or by reference to the quantity, pollution qualities and difficulty of disposal of sewage produced, or on any other equitable basis including, but without limitation, any combination of those referred to above. Charges for connections to the facilities may in the discretion of the governing body be fixed by reference to the portion of the cost thereof which has been paid by assessment of the premises to be connected, in comparison with other premises, as well as the cost of making or supervising the connections.[33]

First class cities operating under a home rule charter are authorized to make equitable charges based in proportion to the service or benefit rendered and may take into consideration the quantity of sewage, concentration, strength, the effect in general which sewage may have in causing pollution of public waters and the cost of disposal of such sewage.[34]

Metropolitan sewer service boards are authorized to allocate treatment costs among all local government units using the system. Charges are figured in proportion to the total volume of sewage estimated to be attributable to each and the charge may be increased or decreased for each unit according to whether it requires more or less treatment to produce a suitable effluent than that discharged by others.[35] In this context the metropolitan sewer services boards would be billing local government units as users and one could safely assume that they, in turn, would be billing the actual users via their own charging powers.

Type II sanitary districts are vested with charging powers,[36] but there is no specific formula stated in the statute. However, the district is vested with the same powers as those possessed by villages for these purposes,[37] and since villages have this authority so would this type of sanitary district.

In type I sanitary districts the statute mandates that:

> Except as herein otherwise provided, all costs of operation, maintenance and repair of joint or common sewers and of all treatment and disposal works and appurtenances thereto for a period of ten years from and after commencement of construction of the

> disposal system and all costs of land and right of way, construction of joint or common sewers, and of all treatment and disposal works and appurtenances thereto shall be a uniform charge upon the entire district, on the basis of assessed valuation, exclusive of money and credits, to be paid by a uniform annual tax upon the property of such district; provided, that in the event any such city of the first class has undertaken, or shall undertake, by contract or otherwise, to convey, treat, and dispose of the sewage of territory not included within the boundaries of such district, such city shall pay the entire cost of such additional capacity of joint intercepting sewers and treatment and disposal works as may be necessary for, and the cost of operation, maintenance, and repair incurred in the conveying, pumping, treatment, and disposal of sewage from such territory not included within the boundaries of such city, such additional cost to be determined by the board of trustees, and included in such city's proportion of the budget, as provided herein.[38]

Thus, during the first 10 years of operation the agency would not be able to comply. However, compliance would be possible later as the statute reads:

> From and after the 10-year period from the commencement of construction, the costs of operation, maintenance, and repair of joint and common sewers, the construction of new joint and common sewers, and the construction, operation, maintenance, and repair of all treatment and disposal works and appurtenances thereto shall be allocated in proper proportion to each city within the sanitary district, upon the basis of the total annual volume of sewage contributed by each city as the same shall be measured or estimated and each such city shall pay such share of the total cost thereof as the volume of sewage contributed by the city and the territory served by such city under contract or otherwise bears to the total volume of sewage. In such estimate of the costs to be borne by each city, there shall be taken into account not only the sewage and wastes of each such city that are intercepted and treated, but an estimate shall be made of the sewage wastes of each city which enter or are discharged directly or indirectly into any stream or watercourse flowing through or adjacent to such district or any part thereof, and such untreated sewage and wastes shall be considered as contributed by such city.[39]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

No agency has the express statutory authority to perform this particular function, but all are vested with certain contractual powers from which this authority may be implied.

Type II sanitary districts appear to have the statutory power which is closest in this respect in that they may accept grants from the United States and thereafter may "enter into any agreement required in connection therewith."[40]

All cities and villages, except cities of the first class operating under a home rule charter, appear to possess this authority by implication. The combination of their general charging powers[41] (discussed in 2.3 and 2.3.1, supra) and their authority to contract with industrial users[42] indicates that they would be able to comply with this requirement. Although such contracting authority is general in its scope, there does not appear to be any statutory obstacles that would prevent satisfactory performance in this manner.

Regional sanitary sewer districts[43] and unorganized areas in counties[44] have the same powers as cities and villages in this regard. In addition to this, unorganized areas in counties have a special statutory power to assess a special benefits charge against benefited property.[45]

Towns possess the authority to exercise the same powers as villages in this regard.[46]

In areas served by metropolitan sewer services boards, the focus is on local government units as users and, thus, there is no express provision relating to industrial users. However, the board has broad contractual powers[47] which could probably be exercised in this manner. In addition, the board may require "persons" which, by definition,[48] includes corporations and other private entities, to use the metropolitan system[49] and to pay for it.[50]

First class cities operating under a home rule charter appear to lack this authority unless it can be imposed via their home rule powers or general statutory charging scheme.[51]

Type I sanitary districts have the express statutory authority to enter into contracts with industrial users[52] and should have no problem with compliance here. The general charging provisions of this type of sanitary district discussed in Section 2.3.1 do not appear to apply to this type of situation[53] and thus are not an impediment.

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

All management agencies, except first class cities operating under a home rule charter which are forbidden by their charters, have express statutory authority to incur such indebtedness.[54] Some of the agencies are subject to certain limitations with regard to bond issues and these will be noted when applicable.

Type I sanitary districts are not authorized to issue bonds in the name of the district[55] but may cause them to be issued in the name of any city included within the district if such city fails to provide the funds for its share of the capital costs involved.[56] The cities included within such a district are authorized to issue bonds, without a vote of the citizens involved, with the last installment thereof to become due and payable not more than 30 years from the date of issuance.[57] Such bonds are subject to a five percent debt limitation based upon all property within the district.[58]

Metropolitan sewer service boards are authorized to issue both revenue and general obligation bonds and neither type of issue is subject to a vote of the electorate.[59] There is no net debt limitation[60] and the board may issue bonds up to the amount of the cost of the construction or improvement involved. The interest rate shall not exceed seven percent[61] and the maturation date shall not extend past 30 years.[62]

Unorganized areas in counties are authorized to issue either general obligation or revenue bonds[63] in such amount as may be necessary to defray, in whole or in part, the cost of establishing and constructing a system.[64] The bonds shall mature in no more than 30 years from the date of issuance and bear a rate of interest not exceeding eight percent per annum.[65] An election shall be required to authorize the issuance of these obligations if less than 80 percent of the cost of the improvement is to be assessed against the property benefited by the improvement.[66]

All other agencies are authorized to issue either general obligation or revenue bonds for construction purposes.[67] Except

as otherwise provided no agency except a city of the first class shall incur or be subject to a net debt in excess of 20 percent of the assessed value.[68] First class cities are subject to a five percent limitation unless their charter provides otherwise.[69] Generally such issuances are not subject to voter approval.[70] Interest rates may not exceed seven percent per annum[71] and such bonds shall mature in no more than 30 years from the date of issuance.[72]

2.4.1 General Obligation Funding.

All agencies have the authority to employ this type of debt. See 2.4 supra for further details.

2.4.2 Special Funds and Revenue Funding.

All agencies have this power. See 2.4 supra for details.

2.4.3 Other Methods of Financing.

There is a Minnesota state water pollution control fund which is created by the issuance of bonds of the state of Minnesota.[73] Local agencies are extended grants from this fund under certain circumstances and local agencies may also borrow against this fund.[74]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Metropolitan sewer service boards[75] and type I sanitary districts[76] are endowed with the express statutory authority to comply with this provision. All other agencies lack the express statutory authority, but possess such authority through implication via their general charging and contractual powers[77] which were more thoroughly discussed in Section 2.3 supra. This requirement is not applicable to towns and first class cities operating under a home rule charter since they do not serve more than one community.

The Minnesota Pollution Control Agency could achieve this via refusal to issue the necessary permits until compliance is assured.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

No management agency has express authority to do this, although they do have a certain degree of control of what types of sewage they would agree to treat.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

It is presumed that each agency would possess this power via their general powers of contract. They would also have a certain degree of control in this respect via their general powers of regulation.

The Pollution Control Agency would certainly possess such authority through its permit powers.[78]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

The Pollution Control Agency has the authority to compel performance of its orders, and in so doing can compel a municipality to exercise its powers so as to comply with an order of the agency.[79] In lieu of such enforcement action, the Agency may assume the powers of the recalcitrant municipality in order to construct, operate and maintain a disposal system or part thereof.[80]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

All management agencies have the requisite authority to comply with this provision.[81] Metropolitan Sewer Boards and Type I Sanitary Districts have express statutory authority to require pretreatment of industrial wastes.[82] All other districts have the power to "maintain" their facilities, which implies the power to require preliminary treatment of harmful wastes.

3.0 SUMMARY

In most respects Minnesota agencies will be able to comply with the requirements of the act. However, they have certain deficiencies.

3.1 Deficiencies

Certain agencies lack the express statutory authority to accept and utilize grants (paragraph 2.2), and legislation would be helpful.

Type I sanitary districts lack the appropriate charging powers for the first 10 years of operation (paragraph 2.3.1), and legislation is needed to remedy this situation.

All agencies lack the express statutory authority to assure that full recovery will be had from industrial users of the federal portion of construction costs (paragraph 2.3.2), and legislation would be helpful in this regard.

Although it is not necessary within the framework of the Minnesota statute, type I sanitary districts lack the authority to issue bonds in their own name (paragraph 2.4).

Not all agencies have express authority to require all participating communities to pay their proportionate share of costs of treatment (paragraph 2.5); legislation would be helpful so as to assure compliance through express statutory authorization similar to that applicable to metropolitan sewer service boards and type I sanitary districts.

All agencies lack the powers needed to refuse wastes from a municipality or subdivision thereof (paragraph 2.6). Although the Pollution Control Agency can effectively control this through its permit system, legislation authorizing treatment agencies to impose sanctions, declare moratoriums, etc., might be helpful.

4.0 BIBLIOGRAPHY

1. Haskell, E. H., Managing the Environment: Nine States Look for New Answers (1971).

2. Haik, Raymond A., William C. Walton and David L. Hills, Aspects of Water Resources Law in Minnesota. Minneapolis, Minnesota University, Graduate School, Water Resources Research Center, 1969. 143 pp. (WRRC Bulletin 11).

3. Minnesota. Pollution Control Agency. Our Environment -- Where Are We Heading? Presented by John P. Badalich to The Minnesota Society of Professional Engineers, Rochester, Minnesota, June 13, 1970. Minneapolis, Minnesota Pollution Control Agency, 1970. 12 pp.

4. Minnesota. Pollution Control Agency. Pollution Control Agency: pollution policies, regulations, organization and activities. Presented by John P. Badalich to the Environment Committee of the Citizens League, St. Paul, Minnesota, December 16, 1969. 23 pp.

5. Minnesota. Pollution Control Agency. Summary of Estimated Program Costs, fiscal 1972 and 1973. Minneapolis, Minnesota Pollution Control Agency, 1970. Various pagings.

6. Planning Research Corporation, Los Angeles, California. Pollution Control through Land Use Management. Prepared for Minnesota Pollution Control Agency, 1970, 2 v.

7. Walton, William C., Raymond A. Haik and David L. Hills, Codified and Uncodified State Laws and Municipal Ordinances Bearing on Water and Related Land Resources in Minnesota. Minneapolis, University of Minnesota, Graduate School, 1968. 640 pp. (WRRC Bulletin (9)).

8. Walton, William C. and David L. Hills, Water and Related Land Resources, State Administration, Legislative Process and Policies in Minnesota, 1970. Minneapolis, University of Minnesota, Graduate School, Water Resources Research Center, 1971. 344 pp. (WRRC Bulletin 27).

FOOTNOTES

(All references are to Minnesota Statutes Annotated unless otherwise noted)

1. §116.02 subd. 1.
2. §116.02 subd. 5.
3. See generally, §116.01 and the explanatory comments thereto.
4. §116.02 subd. 1.
5. §116.04.
6. §§115.03, 116.02 subd. 5.
7. §115.07 subd. 1.
8. §115.07 subd. 3.
9. §115.05 subd. 2.
10. §115.05 subd. 3.
11. §115.07 subd. 4.
12. §115.07 subd. 6; see also §115.47.
13. §115.17 subd. 1, subd. 6.
14. §115.17 subd. 1.
15. §115.16.
16. §115.50.

17. §115.61 et seq.
18. §473C.01 et seq.
19. §§116A.01 et seq., 380.01 et seq.
20. §§444.075, 429.021, 429.051.
21. §443.14.
22. §445.01 et seq.
23. §115.19.
24. §116B.01 et seq.
25. Towns, §115.50; regional sanitary sewer districts §115.61; 444.075; metropolitan sewer service boards 473.05 subd. 1; unorganized areas in counties, §§116A.01 subd. 2, 380.01; any city or village except first class cities operating under a home rule charter, §§444.075 subd. 1, 429.021, 429.011 subd. 2; first class cities operating under a home rule charter, §§443.14; type I sanitary district, §445.10; and, type II sanitary district, §115.26 subd. 1.
26. §473C.15, subd. 5.
27. §§116A.23, 380.18.
28. §115.25 subd. 5.
29. §115.06 subd. 2.
30. Towns, §115.50; regional sanitary sewer districts §115.61; metropolitan sewer service boards §473C.08; unorganized areas in counties §§116A.01 subd. 2, 116A.22, 380.04; cities and villages, generally, §444.075 subd. 3; first class cities operating under a home rule charter; §443.14; type I sanitary district, §445.17; type II sanitary district, §§115.33 subd. 4, 115.30.
31. §115.50
32. §§115.61, 116A.01 subd. 2.
33. §444.075 subd. 3.
34. §443.14.
35. §473C.08 subd. 2(a), (b).
36. §115.33.
37. §115.30; see also §444.075 subd. 3.
38. §445.17 subd. 1.
39. Id.
40. §115.25 subd. 7.
41. §§444.075 subd. 3, subd. 4.
42. §§444.075 subd. 3, subd. 4, subd. 5.
43. §115.61.
44. §116A.01 subd. 2.
45. §116A.22.
46. §115.50.
47. §473C.15 subd. 3.
48. §473C.02 subd. 5.
49. §473C.07 subd. 3.
50. §§473C.07, 473C.08.

51. See generally, §443.14.
52. §445.09(1), (2), (3).
53. §445.17 subd. 1.
54. Towns, §115.40; regional sanitary sewer districts, §115.61; first class cities operating under a home rule charter, §475.52 subd. 2; type II sanitary districts, §115.34; and cities and villages generally, §444.075 subd. 2. Note also that it is §444.075 which incorporates the provisions of chapter 475 and this makes its requirements applicable to certain of these agencies. Also, metropolitan sewer service boards, §473C.12 subd. 2, subd. 3; unorganized areas in counties, §§116A.01, 116A.20, 116A.21; and type I sanitary districts, §§445.11, 445.12 and 445.17.
55. §445.11.
56. Id., §445.17 subd. 7 (note five percent limitation).
57. §445.12.
58. §445.17 subd. 9.
59. §473C.12 subd. 3.
60. Id.
61. Id., §475.55 subd. 1.
62. §473C.12 subd. 3, 475.54 subd. 1.
63. §§116A.01 subd. 2, 116A.20 subd. 1, subd. 2.
64. §116A.20 subd. 1, subd. 2.
65. §116A.20 subd. 3.
66. §116A.20 subd. 2.
67. See note 54, supra.
68. §475.53 subd. 1.
69. §475.53 subd. 3.
70. §475.58 subd. 1.
71. §475.55 subd. 1.
72. §475.54 subd. 1.
73. §§116.16, 116.17, 116.18.
74. §116.16 subd. 8.
75. §473.08.
76. §445.09 subd. 5.
77. Regional sanitary sewer districts §115.61; unorganized areas in counties, 116A.01 subd. 2; cities and villages generally, 444.075 subd. 5; and type II sanitary districts, §§115.27 subd. 2, subd. 3, subd. 4, 115.33.
78. §115.03.
79. §115.47.
80. §115.48.
81. Towns, §115.50; Regional sanitary sewer districts, §115.61; metropolitan sewer service boards, §§473C.01, 473C.02 subd. 9; unorganized areas in counties, §116A.01 subd. 2; cities and villages generally, §444.075 subd. 1; first class cities

operating under a home rule charter, §443.14; type I sanitary districts, §445.09; and type II sanitary districts, §115.19.

82. §§473C.07, 445.09.

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OHIO REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

In Ohio the state-wide agency in charge of water pollution control is the Environmental Protection Agency.[1] It is headed by the Director of Environmental Protection who is charged with administering the laws and regulations pertaining to the prevention, control and abatement of water pollution.[2] In helping to carry out his functions the director may designate one of his staff to serve "as an ombudsman and expeditor between the citizens and the environmental protection agency in all matters of the environment.[3]

The Director has the authority to develop plans and programs pertaining to water pollution control in Ohio[4] and may issue, modify or revoke orders to prevent, control or abate water pollution.[5]

In furtherance of his functions the Director is charged with adopting standards of water quality applicable to the waters of the state[6] and may adopt effluent standards for discharges into such waters.[7]

Actual control is carried out via a permit system which is designed to control the discharge of sewage and industrial wastes.[8]

The Director is vested with the enforcement powers needed to assure compliance with the Ohio Act (either by himself or through the Ohio Attorney General's office)[9] and may, on his own initiative, investigate or make inquiries in any manner into any alleged act of pollution or failure to comply with orders or standards.[10]

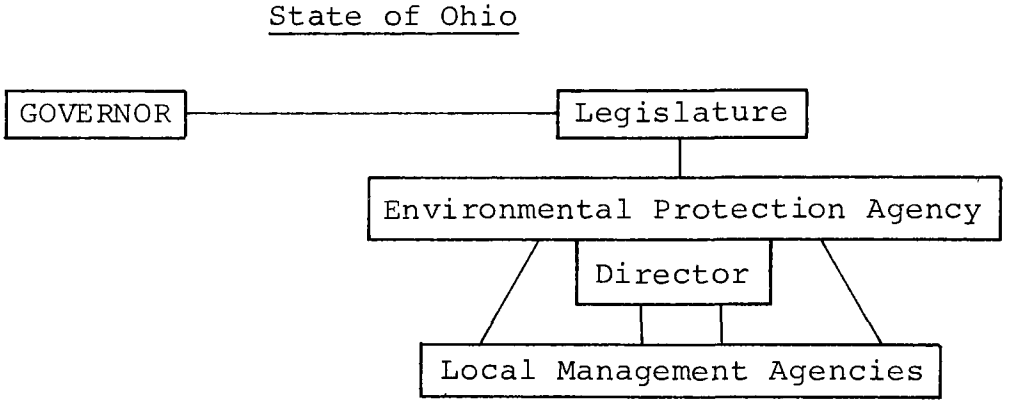
Failure to comply with the Act or with the Director's orders or standards may result in the assessment of very serious penalties.[11] Appeal of the agencies actions and orders may be had from the Environmental Board of Review.[12]

The Agency may exercise all incidental powers necessary to carry out the purposes of the Ohio Act[13] and is the agency of

the state which deals with the federal government regarding the affairs of water pollution control.[14]

Management of waste water treatment facilities is carried out at both the local-municipal[15] and district levels.[16] There are several types of districts and they include: conservancy districts,[17] sanitary districts,[18] county sewer districts,[19] regional sewer districts[20] and the Ohio Water Development Authority.[21]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All of the agencies under consideration have sufficient express statutory authorization to assure compliance with the requirements of this section.[22]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Regional sewer districts[23] and the Ohio Water Development

Authority[24] have the express statutory authority to accept and use such funds.

Conservancy districts,[25] sanitary districts[26] and municipalities[27] are vested with the express statutory authority to acquire real or personal property by donation for the works and improvements of the district. This would probably be sufficient authorization to assure compliance with this provision.

County sewer districts lack express statutory authorization of any type in this regard.

However, in Ohio, actual receipt and administration of state and federal monies is handled by the Director of Environmental Protection.[28] All applications for such grants by the local management agencies must be analyzed and approved by his office before the local agencies receive such funds.[29]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All of the management agencies under consideration are vested with the authority needed to raise revenues of this type[30] and they will be discussed with more particularity in paragraph 2.3.1, infra.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Although there are differences in the statutory language relating to the charging powers of the various agencies, it seems likely that all are capable of compliance. The Ohio Water Development Authority will certainly be able to comply as it is directed to base charges upon the volume of sewage received as well as the degree of treatment required.[31] Municipalities are directed to charge "just and equitable" rates;[32] county sewer districts are required to charge "reasonable" rates;[33] conservancy districts[34] and sanitary districts[35] are directed to charge in proportion to the "benefits" extended; and regional sewer districts are to arrange charges according to contract.[36]

2.3.2 Full Recovery Will Be Had from the Industrial User of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

The only agency vested with the express statutory authority needed to assure compliance with the requirements of this provision is the Ohio Water Development Authority.[37] Since none of the other local agencies have such express authority one would be required to assume that compliance could be realized either via their general contracting and charging powers or that legislation would be needed to assure such authority.

Another possible source of power which could be used to assure compliance with this provision would be the permit issuing authority to the Ohio Environmental Protection Agency. As such, the agency could require a contractual arrangement of this nature as a pre-requisite to the issuance of a permit.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All of the Ohio agencies under consideration have the authority to employ these financing techniques.[38]

2.4.1 General Obligation Funding.

All of the agencies may issue general obligation bonds[39] with the following limitations being imposed by statute: When issued by sanitary districts, such bonds may bear no more than eight percent (8%) interest per annum and such bonds must mature within thirty years of their issuance;[40] in county sewer districts, voter approval is required previous to the issuance of such bonds and the issuance may not exceed five percent (5%) of the assessed valuation of property benefited;[41] bonds issued by the Ohio Water Development Authority and regional sewer districts are required to mature within forty years of their issuance;[42] such bonds, when issued by municipalities, are required to mature within twenty years of the date of issuance.[43] There are no other specific restrictions although such bonds issuances must comply with the Ohio general bonding laws.[44]

2.4.2 Special Funds and Revenue Funding.

Conservancy districts may issue "anticipatory bonds" for up to thirty years and such bonds may bear interest not to exceed

eight percent (8%) per annum.[45] Such districts may also issue revenue bonds which may bear interest not exceeding eight percent (8%) per annum for up to forty years.[46]

Regional sewer districts[47] and the Ohio Water Development Authority[48] are authorized to issue such bonds for up to forty years and must create a sinking fund to assure payment of interest and principal when due.

Municipalities are constitutionally authorized to issue revenue bonds in order to finance public utilities.[49] County sewer districts are not expressly authorized to issue revenue bonds. Sanitary districts are expressly forbidden to issue such bonds, according to the Ohio Attorney General.[50]

2.4.3 Other Methods of Financing.

Conservancy districts,[51] regional sewer districts[52] and the Ohio Water Development Authority[53] are expressly authorized to refund bonds if necessary.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Without express legislation to the contrary, one may assume that any of the local agencies could assure compliance with this provision. In addition, county sewer districts,[54] regional sewer districts,[55] municipalities[56] and the Ohio Water Development Authority[57] are vested with express authorizations in this regard.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality of Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of the agencies under consideration are vested with the express statutory authority to do exactly what is envisioned by this requirement of the Act. However, conservancy districts,[58] sanitary districts[59] and municipalities[60] each have the authority to protect their treatment systems by refusing to accept particular types of waste and this would presumably include "cut-off" powers. Both the Ohio Water Development Authority[61] and regional sewer districts[62] have express authorization to promulgate rules and regulations pertaining to use of their systems and perhaps this power could be used to assure compliance with approved plans. Regional sewer districts have the power to deny service to users delinquent in payment of treatme t

changes.[63] County sewer districts lack express authorization of any type in this regard.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

All of the local management agencies possess the express statutory authority needed to assure compliance with the requirements of this provision.[64] In addition, the Director of Environmental Protection is vested with the express authority to perform this function;[65] such function could also be fulfilled by the Ohio Environmental Protection Agency through its permit-issuing authority.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

None of the agencies have any express authority to take action against municipalities in this manner, but conservancy districts,[66] sanitary districts,[67] county districts,[68] regional districts[69] and the Ohio Water Development Authority[70] have the power to assess penalties for failing to pay service charges when due and to issue fines for violation of rules of regulation by users.

In addition, penalties and fines may be imposed for failure to comply with the requirements of the Environmental Protection Act or with rules, regulations or orders issued by the Director of the Environmental Protection Agency.[71]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

All of the management agencies under consideration possess the requisite statutory authority needed to assure compliance with the requirements of this provision.[72]

3.0 SUMMARY

For the most part, the Ohio management agencies will be able to assure compliance with the requirements of the Act. However, each of the agencies possesses certain deficiencies in varying degrees and such deficiencies will be analyzed in paragraph 3.1, infra.

3.1 Deficiencies

In Chio, only regional sewer districts and the Ohio Water

Development Authority are vested with the express statutory authority to accept and utilize grants or other funds from any source for waste treatment management purposes, and county sewer districts lack any authority in this respect. Therefore, it would be helpful if legislation were passed to assure that all agencies could comply with this provision. (2.2)

All agencies except the Ohio Water Development Authority lack the express statutory authorization to base waste treatment charges on strength and composition of effluent. Legislation would be helpful in this regard. (2.3.1)

All agencies except the Ohio Water Development Authority lack the express authorization to recover such construction costs from industrial users. Legislation would probably be required to assure compliance. (2.3.2)

Sanitary districts, county sewer districts and municipalities lack the authority to issue revenue bonds. (2.4.2)

Although it would not be absolutely necessary, legislation would be helpful to assure compliance with the provisions of the act that require each participating community pay its proportionate share of treatment costs. (2.5)

Legislation would be required to assure compliance with the provision that the treatment agency have authority to refuse wastes from any non-complying municipality. (2.6)

4.0 BIBLIOGRAPHY

1. Note, Legislative Responses to Air and Water Pollution, 33 Ohio S.L.J. 860 (1972).

2. Ohio Legislative Service Commission, Air and Water Pollution, Staff Research Report no. 84 (1967).

FOOTNOTES

1. Ohio Rev. Code Ann. §§3745.01, 6111.03 (Page 1954).
2. Id.
3. O.R.C.A. §3745.011.
4. O.R.C.A. §6111.03(A).
5. O.R.C.A. §6111.03(H).
6. O.R.C.A. §6111.041.
7. Id.
8. O.R.C.A. §§6111.03(J), (M), 6111.04, 6111.45.

9. O.R.C.A. §§3745.011(f), 3745.08, 3745.09, 6111.03(L).
10. O.R.C.A. §6111.05.
11. O.R.C.A. §6111.07, 6111.99.
12. O.R.C.A. §3745.04.
13. O.R.C.A. §6111.03(O).
14. O.R.C.A. §6111.03(N).
15. O.R.C.A. §§715.40, 715.43, 717.01(J), 703.01
16. See Notes 17-21, infra.
17. O.R.C.A. §§6101.04(H), 6101.15(c).
18. O.R.C.A. §§6115.04(D), 6115.18(c).
19. O.R.C.A. §6117.01.
20. O.R.C.A. §§6119.01(B), 6119.06(G), 6119.19.
21. O.R.C.A. §§6121.03, 6121.04(F).
22. Conservancy districts, O.R.C.A. §6101.15(c); sanitary districts O.R.C.A. §6115.18(c); county sewer districts, O.R.C.A. §6117.01; regional sewer districts, O.R.C.A. §§6119.06(G), 6119.19; the Ohio Water Development Authority O.R.C.A. §§6121.03, 6121.04(F); municipalities, O.R.C.A. §§715.40, 715.43, 717.01(J).
23. O.R.C.A. §6119.06(T).
24. O.R.C.A. §6121.04(I)(N).
25. O.R.C.A. §6101.15(K).
26. O.R.C.A. §6115.18(H).
27. O.R.C.A. §717.01(V).
28. O.R.C.A. §§3745.01(E), 6111.03(C)(D).
29. O.R.C.A. §6111.40.
30. Conservancy districts, O.R.C.A. §§6101.48, 6101.53; sanitary districts, O.R.C.A. §§6115.48, 6115.53; county sewer districts, O.R.C.A. §§6117.02, 6117.04, 6117.06, 6117.251, 6117.30; regional sewer districts, O.R.C.A. §§6119.06(I), 6119(V), 6119.09; Ohio Water Development Authority, O.R.C.A. §§6121.04(Q), 6121.042, 6121.06, 6121.13; municipalities, O.R.C.A. §§727.01, 729.11, 729.49.
31. O.R.C.A. §6121.041.
32. O.R.C.A. §§727.01(B), 729.49.
33. O.R.C.A. §6117.30.
34. O.R.C.A. §§6101.48, 6101.49, 6101.53.
35. O.R.C.A. §§6115.48, 6115.49.
36. O.R.C.A. §§6119.06(V), 6119.09.
37. O.R.C.A. §6121.041.
38. Conservancy districts, O.R.C.A.§§6101.451, 6101.46, 6101.47, 6101.56; sanitary districts, O.R.C.A. §6115.47; County sewer districts, O.R.C.A. §6117.08, 6117.25, 6117.251; regional sewer districts, O.R.C.A. §§6119.06(J), 6119.12, 6119.30, 6119.36; Ohio Water Development Authority, O.R.C.A. 6121.03, 6121.04(H); municipalities O.R.C.A. §729.11

39. Conservancy districts, O.R.C.A. §§6101.47, 6101.50; sanitary districts, §6115.50; county sewer districts, §§6117.08, 6117.25, 6117.251; regional sewer districts, O.R.C.A. §6119.12; Ohio Water Development Authority, O.R.C.A. §6121.06; municipalities, §729.11.
40. O.R.C.A. §6115.50.
41. O.R.C.A. §6117.311.
42. O.R.C.A. §6121.06, 6119.12.
43. O.R.C.A. §729.11
44. O.R.C.A. §133.01 et seq.
45. O.R.C.A. §6101.50.
46. O.R.C.A. §6101.501.
47. O.R.C.A. §6119.12.
48. O.R.C.A. §§6121.03, 6121.04(H), 6121.06.
49. Const. of Ohio, Art. 18 §12.
50. 1964 Opinions of Atty. Gen. 1579.
51. O.R.C.A. §6101.501.
52. O.R.C.A. §6119.12.
53. O.R.C.A. §6121.06.
54. O.R.C.A. §§6117.38, 6117.41.
55. O.R.C.A. §6119.06(P), 6119.09.
56. O.R.C.A. §§729.42, 729.43, 729.45.
57. O.R.C.A. §§6121.041, 6121.13.
58. O.R.C.A. §§6101.19(A)(S), 6101.19(C).
59. O.R.C.A. §6115.23(E).
60. O.R.C.A. §729.51.
61. O.R.C.A. §6121.04(F).
62. O.R.C.A. §§6119.06(N), 6119.08.
63. O.R.C.A. §6119.06(V).
64. Conservancy districts, O.R.C.A. §§6101.19(3), 6101.72; sanitary districts, O.R.C.A. §§6115.23, 6115.68; County sewer districts, O.R.C.A. §§6117.03, 6117.04; regional sewer districts, O.R.C.A. §§6119.03, 6119.06(X); Ohio Water Development Authority, O.R.C.A. §6121.041; municipalities, O.R.C.A. §729.45.
65. O.R.C.A. §6111.03(H)(3).
66. O.R.C.A. §§6101.59, 6101.99.
67. O.R.C.A. §6115.99.
68. O.R.C.A. §§6117.02, 6117.37, 6117.99.
69. O.R.C.A. §§6119.06(V), 6119.09.
70. O.R.C.A. §6121.99.
71. O.R.C.A. §§6111.07, 6111.99.
72. Conservancy districts, O.R.C.A. §§6101.01(B), 6101.04(H), 6101.15(C); sanitary districts, O.R.C.A. §6115.01(B); county sewer districts. O.R.C.A. §6117.02; regional sewer districts, O.R.C.A. §§6119.011(C), 6119.011(J), 6119.06(H); Ohio Water Development Authority, O.R.C.A. 6121.04(G); municipalities, O.R.C.A. §729.49.

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

WISCONSIN REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Pollution control and state-level waste water management powers are placed, via statute, within the Department of Natural Resources (DNR).[1] The Division of Environmental Protection (DEP) is the administrative arm of the DNR responsible for fulfilling these duties, and it is further divided into bureaus to increase its effectiveness.[2] The bureau herein important for the purposes of this study is the Bureau of Water Supply and Pollution Control.[3]

The state is divided into regions,[4] and each region is served by a regional water resources board.[5] The DNR is charged with formulating a long range, comprehensive state water resources plan for each region which shall thereafter be carried out by the DNR.[6] The DNR is also charged with adopting rules setting standards of water quality to be applicable to the waters of the state.[7] The DNR may issue enforcement orders which shall be enforced in court by the attorney general when necessary.[8]

The DEP's Bureau of Water Supply and Pollution control is in charge of operating the permit functions. Its powers in this regard are as follows:

> This Bureau reviews all the plans, specifications, and issues permits for new and modified public water supply systems, sewers, sewage treatment and collection systems as well as public and private industrial waste treatment facilities.[9]

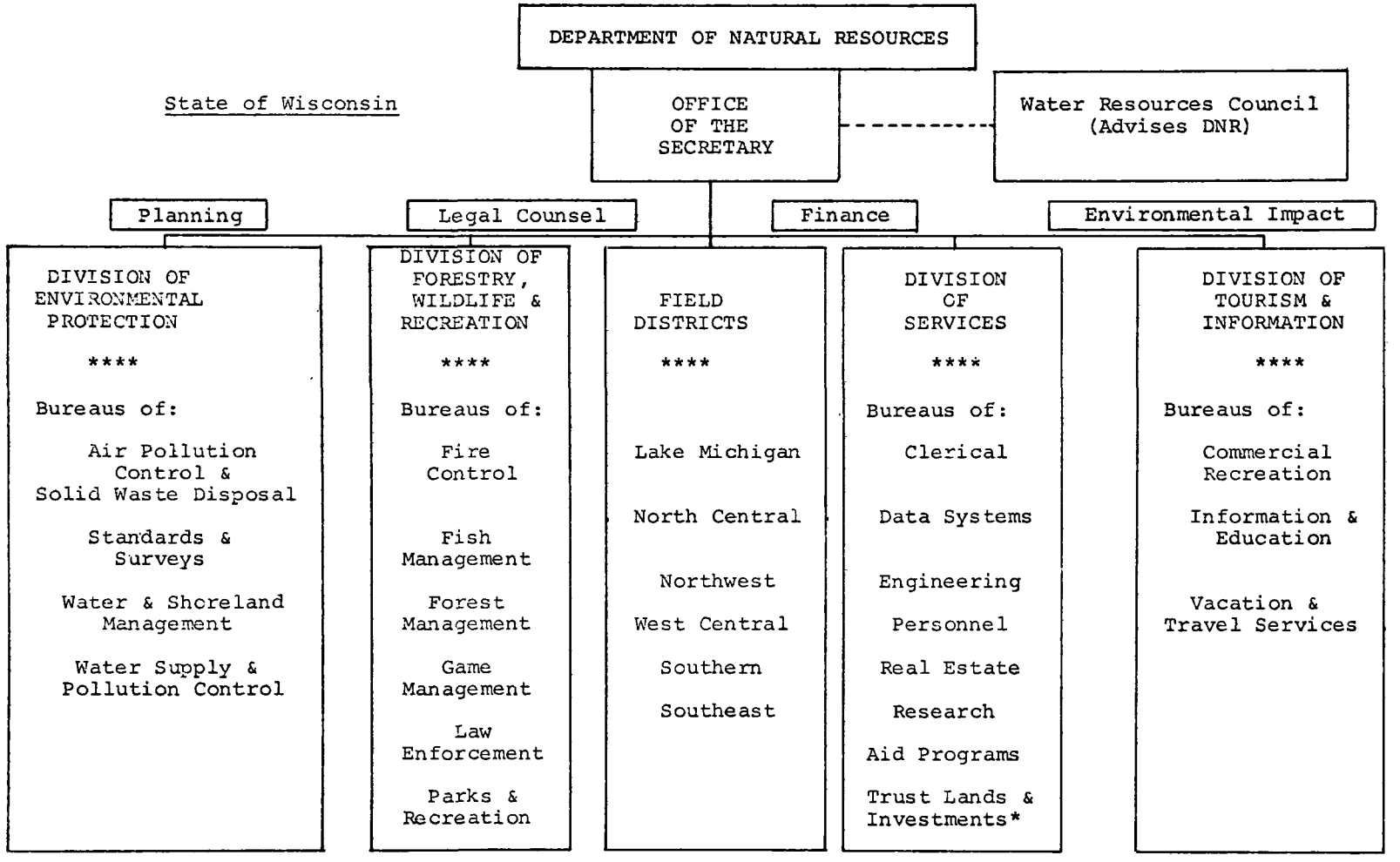
Monitoring is statutorily vested in the DNR[10] and it monitors wastes of all kinds which are discharged into municipal sewerage systems.[11] The monitoring is, in fact, conducted at the state level by the DEP's Bureau of Standards and Surveys. The Bureau monitors all water bodies and drainage basins and has set up an automatic monitoring system along major waterways.[12]

The management agencies responsible for sewage treatment are a localized character. It may be conducted by cities,[13] by utility districts,[14] by any two or more adjoining governmental units,[15] by town Sanitary Districts,[16] by Metropolitan Sewerage

Districts[17] or by any town, village or city in addition to all other methods provided by law.[18]

There are two types of Metropolitan Sewerage Districts and each is run by a Metropolitan Sewerage Commission. The first type can be created "in contiguous territory containing two or more of any of the following municipalities: any city or village in its entirety or any township of part thereof, located in one or more counties . . ."[19] The second type may be created "in any county having a population of 500,000 or more where the common council of any city of the first class" so decides.[20]

Utility districts are used in lieu of town sanitary districts in certain situations and when so used have exactly the same powers as town sanitary districts.[21] Therefore, utility districts will receive no specific mention throughout part II, but the reader should remember that the discussion of the powers of town sanitary districts applies likewise to utility districts.



*A division attached to DNR for administrative purposes only.

2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

In Wisconsin, it appears that the various functions required -- by whatever areawide plan that will come into existence -- can be performed by various different existing agencies at both the state and local levels. Therefore, the areawide plan should provide which agency will be responsible for each required function. Currently the operation of publicly owned waste treatment works is carried out by cities, town sanitary districts, two types of metropolitan sewerage districts and utility districts. Additionally, any two or more adjoining municipalities may combine their sewerage treatment efforts, or any city, town or village may establish sewage treatment, via special statutory provision, in addition to all other methods provided by law.[22]

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All management agencies in Wisconsin have either express or legally implied authority to comply with this provision.

Cities have the power to construct systems of sewerage.[23] Any two adjoining governmental units may jointly construct, operate and maintain a joint sewerage system, inclusive of the necessary intercepting sewers and sewerage treatment works.[24] Such joint action shall be carried out by a sewerage commission.[25] The town board of any town may establish town sanitary districts,[26] run by a town sanitary district commission.[27] The commission shall project, plan, construct and maintain the sewerage system and is authorized to take any proceedings necessary to carry out such powers and duties. Metropolitan sewerage districts may be created,[28] and are run by a metropolitan sewerage commission.[29] The commission has the authority to plan, construct, maintain and operate sewage disposal works.[30] In addition to all other methods provided by law, any town, village or city may construct, acquire or lease, extend or improve any plant and equipment within or without its corporate limits for the collection treatment and disposal of sewage.[31]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes [§208(c)(2)(D)].

The DNR may accept gifts and grants from any private or public

source for any purpose under its jurisdiction and and may expend or use them for the purpose for which received.[32]

All management agencies are expressly authorized to receive funds from almost any source including federal sources.[33]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All waste treatment management agencies have express statutory authority to raise revenues via assessment of waste treatment charges.

Town sanitary districts have the authority to establish sewerage service charges,[34] and must use the same charging system as any town, village or city.[35] Metropolitan Sewerage Commissions have the power to assess charges based upon the estimation of annual operation and upkeep expenses.[36]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

All agencies have the requisite statutory authority to provide for compliance with this provision.

The statutory provision for towns, cities and villages offers a rather wide range of choices:

> For the purpose of making equitable charges for all services rendered by the sewerage system to the municipality or to citizens, corporations and other users, the property benefited thereby may be classified, taking into consideration the volume of water, including surface or drain waters, the character of the sewage or waste and the nature of the use made of the sewerage system, including the sewage disposal plant.[37]

Town sanitary districts are directed by statute to follow the same charging rules that apply to cities, towns and villages.[38]

In metropolitan sewerage districts the commission is directed to base charges on estimates of the annual expense of operation and of keeping in repair such sewerage system and disposal plant. Each city, town or village in the district is then charged on

the basis of that proportion of the whole expense as the amount of sewage it contributes bears to the total amount of sewage disposed of.[39]

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the management agencies examined have explicit statutory authority to recover federally funded costs from industry. However, this power is implicit in their charging authority (see the preceding two sections) or could fall within their respective "necessary and proper authorizations."[40] In this context, it is also quite likely that the terms of the federal grant would be binding, in which case, the management agency would have a statutory basis for so charging industrial users.[41] In addition, the management agencies are authorized to accept contributions from, and enter into contracts with, commercial, industrial and other establishments for the purpose of abatement of water pollution.[42] These broad powers are sufficient to authorize recovery from industry for its share of the federally funded costs.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All management agencies have the authority to finance sewage treatment facilities via indebtedness.[43] General limitations related to public or municipal indebtedness are not applicable to sewage treatment facilities financed with revenue bonds.[44]

Town sanitary districts may issue bonds, but the interest (when due) and the principal (at maturity) must be secured by a direct annual tax.[45] The issuance is not automatically subject to voter approval, but may become so if, within thirty days after the issuance is publicly announced, there is filed a petition requesting said submission, signed by electors numbering at least 10 percent of the votes cast for governor in the district at the last general election.[46] There is a 20 year maturity date limitation on such general obligation bonds.[47]

Metropolitan Sewerage Districts have a similar security mandate[48] and a similar voter approval provision.[49] Maturity is also limited to 20 years.[50]

Metropolitan sewerage districts of the other variety[51] have the

same powers with the exception that voter approval is never required.[52]

2.4.1 General Obligation Funding.

All agencies possess this authority[53] and there are no express limitations other than those noted above.

2.4.2 Special Funds and Revenue Funding.

All agencies possess this authority[54] and there are no express limitations other than those noted above.

2.4.3 Other Methods of Financing.

Cities may also issue mortgage bonds.[55]

2.5 Authority to Assure in Implementation of its Waste Treatment Management Plan that Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Both types of metropolitan sewerage districts have this authority.[56] Normally this provision would not be applicable to town sanitary districts (since the usual situation is where a district is part of one town) and there is no express provision in this respect. However, the situation could exist[57] and, if so, this requirement could probably be met via the districts general charging powers.[58]

When two or more adjoining communities jointly operate a sewerage system each must pay its proportionate share of treatment costs.[59]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Town sanitary districts lack this power unless it can be assumed from their general rule making powers.[60]

Both types of metropolitan sewerage districts have similar powers in this regard. In each the governing commission is endowed with broad rule making powers in regard to supervision and operation of treatment plants but there is no express authority to "cut-off" service.[61] In the absence of this express authority it is unlikely that such authority exists since such action would create serious health hazards.

Cities also have no apparent statutory authority to do this.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

The DNR has this authority throughout the state. It must approve the plans of all treatment plants before they are carried out and this includes the building of proposed systems as well as changes in plant operations or plant extensions.[62]

Both types of metropolitan sewerage commissions have the express statutory power to do this.[63]

This analysis is not applicable to town sanitary districts or cities generally since each is an intra-municipality operation.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Metropolitan sewerage commissions have a "rebuilding" power whereby they may require any town, city or village in such county, or any occupant of any premises outside of said city of the first class, located in such county, which is discharging sewage effluent into any river or canal within such county, to rebuild such facilities so as to comply with such regulations as the commission may establish.[64]

The DNR has the authority to levy fines in certain situations.[65]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Town sanitary districts have this power[66] and cities generally have this power.[67]

Both types of metropolitan sewerage commissions are specifically empowered to treat industrial wastes.[68]

3.0 SUMMARY

Wisconsin is, for the most part, capable of complying with the requirements of the act. However, certain possible deficiencies were noted previously, and they are discussed below.

3.1 Deficiencies

Under the requirements of the act management agencies must be

able to obtain full recovery from industrial users of the waste treatment works of that proportion of the construction costs of treatment works reasonably attributable to treatment of such industrial wastes. Although there is no express authority to do this, it could be reasonably implied from the agencies' broad powers to enter into contracts with industrial establishments for the purpose of water pollution abatement as noted in 2.3.2. Therefore, this is not a serious deficiency.

There is no express statutory authority for most of the agencies to refuse to receive wastes from any municipality or subdivision thereof which does not comply with any provisions of an approved plan. However, it should be noted that metropolitan districts have broad powers over regulation of connections to the system.[69] This authority would enable the districts to refuse to receive wastes from non-complying municipalities.

4.0 BIBLIOGRAPHY

1. Beuscher, Current Trends in Wisconsin's Water Law, 40 Wis. Bar Bull. 19 (April 1967).

2. Carmichael, Forty Years of Water Pollution Control in Wisconsin: A Case Study, 1967 Wis. L. Rev. 350 (1967).

3. Haskill, E. H., Managing the Environment: Nine States Look for New Answers, (1971).

4. Holden, Matthew, Pollution Control as a Bargaining Process: an essay on regulatory decision-making. Ithaca, New York, Cornell University Water Resources Center, 1966. 53 p. (Cornell University Water Resources Center. Publication No. 9).

5. Kerrigan, James E., Help Stamp Out Water Pollution Panic. Wisconsin Alumnus 72(1):7-8, 29-30. October 1970.

6. Kusler, J. A., Water Quality Protection for Inland Lakes in Wisconsin; a comprehensive approach to water pollution. Wisconsin Law Review 1970:35.

7. Ranney, David C., An Analysis of Alternative Institutional Patterns for Managing Water Quality on a Regional System Basis. Madison, University of Wisconsin, Water Resources Center, 1970. 238 p. (Institutional Design for Water Quality Management: a Case Study of the Wisconsin River, Volume IX, Section K).

8. Voigt, L. P., Wisconsin Water Resource Problems. Wisconsin Conservation Bulletin, January-February 1970.

9. Wisconsin. Department of Natural Resources. Wisconsin Natural Resources Laws, 1967-1968. Madison, n.d. Various pagings. (Publication 702-68).

10. Wisconsin. Department of Natural Resources. Division of Environmental Protection. Water Resource Management in Wisconsin. Madison, 1968. 49 p.

11. Wisconsin. Laws, statutes, etc. An Act to Repeal 20.705 and 20.870 . . . relating to the creation of a water resources division in a reconstituted department of resource development . . . Chapter 614, Laws of 1965, effective July 1, 1966.

12. Wisconsin. Laws, statutes, etc. Summary of Wisconsin Water Resources Act, Chapter 614, Laws of 1965. (Madison, n.d.) 7 p.

13. Wisconsin. Natural Resources Council of State Agencies. Quality Management for Wisconsin: a report on preserving and improving the quality of the air, land and water resources. Madison, Wisconsin, Natural Resources Council of State Agencies, 1970. 97 p.

14. Wisconsin. University. Water Resources Center. Interagency Water Resources Research and Data Collection Program, 1968. 54 p.

15. Wood, D. F., Wisconsin's Requirements for Shoreland and Flood Plain Protection. Natural Resources Journal 10:327. April 1970.

FOOTNOTES

1. Wis. Stat. Ann. §144.025.
2. Haskill, E. H., Managing the Environment: Nine States Look for New Answers, 299-237 (1971).
3. See, Schematic Diagram.
4. Id. §144.025(4).
5. Id. §144.025(5).
6. Id. §144.025(2)(a).
7. Id. §144.025(2)(b).
8. Id. §144.025(2)(c), (d).
9. Haskill, note 2 supra, at 234.
10. Id. §144.54.
11. Id. §144.54(1).

12. Haskill, note 2 supra, at 235.
13. Id. §62-18.
14. Id. §66.072.
15. Id. §144.07(4)(a).
16. Id. §60.30 et seq.
17. Id. §§59.96, 66.20 et seq.
18. Id. §66-076.
19. Id. §66.20.
20. Id. §59.96.
21. Id. §66.072(5).
22. See the text of "Description of Existing Agencies," supra, and the accompanying footnotes.
23. Id. §62.18.
24. Id. §§144.07(4)(a).
25. Id. §144.07(4)(a).
26. Id. §60.301.
27. Id. §60.306.
28. Id. §66.20.
29. Id. §§66.20(1), 66.23(Supp. 1973).
30. Id. §§66.24, 59.96(6).
31. Id. §66.076(1).
32. Id. §144.025(2)(n).
33. Id. §66.33.
34. Id. §60.306(5).
35. Id. §66.076(1), (4).
36. Id. §§66.25, 59.96(8).
37. Id. §§66.076(5).
38. Id. §60.306(5).
39. Id. §§66.25, 59.96(8).
40. Town sanitary districts, 60.306(2), 2(m); cities, 62.11; metropolitan sewerage districts, 66.24.
41. See e.g., 66.076(4).
42. Id. §66.33(3), (4).
43. Cities, §66.076(1); town sanitary districts, §60.307, 60.308(2), 67.12; metropolitan sewerage districts §66.22, 59.96(7), 67.12.
44. Id. §67.01(1), (8)(b).
45. Id. §60.307(4).
46. Id. §60.307(3).
47. Id. §60.307(6).
48. Id. §66.25.
49. Id. §66.25.
50. Id. §66.25.
51. i.e., the §59.96 -- type metropolitan sewerage district.
52. Id. §59.96(7)(a), (c).
53. Id. §66.54(1)(a), 66.54(2)(d).
54. Id. §66.076(1).

55. Id. §66.076(2).
56. Id. §§66.25, 59.96(8).
57. Id. §60.30(1).
58. Id. §§60.306(5), 66.076(5).
59. Id. §144.07(4)(e).
60. Id. §60.306(2m).
61. See generally, §59.96(b)(i), (o).
62. Id. §144.04.
63. Id. §§66.24, 59.96(6)(o).
64. Id. §§66.24, 59.96(6)(c).
65. Id. §144.05(1).
66. Id. §§60.30(1), 144.01(2), 66.076(5)
67. Id. §66.076(5).
68. Id. §§66.24, 59.96(6)(a).
69. Id. §66.24(3)(Supp. 1972).

REGION VI

ARKANSAS REPORT

(1971)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Arkansas' primary water pollution control agency is the Department of Pollution Control and Ecology. Its functions in this area include:

1. administration and enforcement of all laws and regulations relating to the pollution of any waters of the state;

2. conduct of investigations and surveys on the extent, character, and effect of the pollution of state waters;

3. establishment of pollution standards for state waters;

4. preparation of a comprehensive program for the elimination or reduction of water pollution;

5. issuance of orders prohibiting or abating discharge of wastes into state waters, requiring construction or alteration of waste disposal facilities, setting water quality standards, and classifying waters within the state;

6. approval of plans for waste disposal facilities;

7. issuance and revocation of discharge permits;

8. promulgation of rules and regulations effectuating its statutory powers;

9. conduct of hearings and investigations, and entrance upon public or private property as necessary to effectuate its pollution control functions;

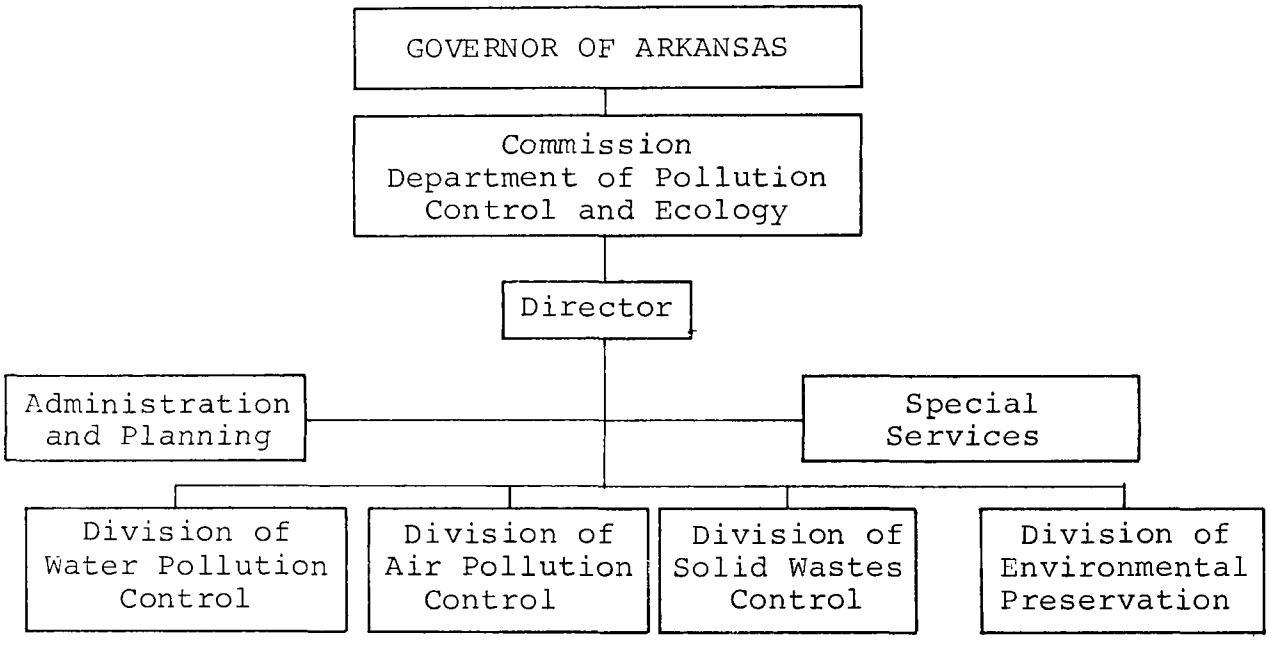
10. Functioning as the state water pollution control agency for purposes of the Federal Water Pollution Control Act, acceptance of federal grants, and administration of a state grant program financed by revenue bonds issued by the Department.[1]

A coordinate agency with respect to water pollution control is

the Arkansas Game and Fish Commission. The Commission is also empowered to control disposal of wastes into the waters of the state and to abate existing pollution.[2]

1.2 Schematic Diagram of Existing Agencies

DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

This analysis covers cities, towns, municipal improvement districts, and suburban improvement districts, which constitute all of Arkansas' waste water treatment agencies. The capacity of each agency is considered with respect to each of the grant eligibility requirements discussed below.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Arkansas' waste water treatment agencies are authorized to construct, (directly or by contract), operate and maintain waste treatment facilities.[3]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Arkansas' waste water treatment agencies are at least implicitly authorized to accept and use federal grants.[4] Additionally, suburban improvement districts are specifically authorized to act in cooperation with the federal government in financing facilities which the districts themselves are authorized to construct.[5]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Arkansas' cities and towns are expressly authorized to collect user charges for waste water treatment services.[6] Municipal improvement districts may be implicitly so authorized through a provision authorizing them to apply profits derived from operation of a sewer system to the municipal debt.[7] Suburban improvement districts are authorized to fund operation and maintenance costs through tax levies proportioned to the benefit assessed against properties within the district. With respect to municipal improvement districts and suburban improvement districts, neither is expressly authorized to comply with the charge requirements of the Act.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

In addition to a general authority to assess and collect charges for waste water treatment services, Arkansas cities and towns are authorized to perform such acts as are necessary and expedient for the successful operation of their treatment works.[8] These two grants of authority are sufficient to allow them to base their user charges on the character, volume, and rate of flow of effluent treated. Therefore, they have authority to structure their charge schedules to assure that each category of user, residential, commercial, and industrial, will pay its appropriate share of the costs of operation and maintenance of waste water treatment facilities. Municipal improvement districts and suburban improvement districts do not comply with this provision as they lack adequate authority to charge for waste water treatment services.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no specific legislative authorization for this type of costs recovery by any of Arkansas' waste water treatment agencies. Due to the agencies' inadequate grant acceptance and user charge authorities, they have no clearly implied power which would comply with this requirement of the Act.

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

Arkansas' cities and towns are authorized to issue revenue bonds, but not general obligation bonds, to fund construction of waste water treatment facilities.[9] They lack specific authorization to issue short term obligations. There is no minimum maturity specified for the revenue bonds which they are authorized to issue; such bonds could in theory be issued as short term obligations. Also, their authority to enter into contracts[10] gives them a limited capability to incur short term indebtedness. Suburban improvement districts and municipal improvement districts are authorized to issue general obligation but not revenue bonds,[11] except as noted in section 2.4.3. As with cities and towns, the districts have power to incur short term indebtedness implicit in the absence of minimum maturity limits and through their authority to enter into contracts.[12]

2.4.1 General Obligation Funding.

As indicated above, Arkansas' towns and cities are not authorized to issue general obligation bonds for waste water treatment purposes. Both municipal and suburban improvement districts may do so as they are not "municipalities" within the meaning of the state constitutional prohibition against issuance of interest bearing evidences of debt by municipalities or counties.[13] Neither district is subject to a limitation on such indebtedness or is required to seek electoral approval of bond issues.

2.4.2 Special Funds and Revenue Funding.

As indicated above, neither municipal nor suburban improvement districts are authorized to issue revenue bonds, except as noted in section 2.4.3. Cities and towns, however, may do so.[14] No electoral approval is required, only an ordinance passed by the municipal council.[15]

2.4.3 Other Methods of Financing.

Though municipal improvement districts are not authorized to issue revenue bonds, they may pledge revenues from facility operation to bond retirement.[16] The bonds, however, remain general obligations of the district.

Where municipal and suburban improvement districts have contracted to operate a waste water treatment facility jointly, the joint district is authorized to issue revenue bonds.[17]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

Cities and towns may contract to provide waste water treatment services for other cities, towns, or other political subdivisions of the state.[18] The provision for payment included in the contract would be acceptable for grant purposes as the proportionate share of treatment costs of the service receiving community. Cities, towns, and municipal improvement districts may extend their waste treatment services to areas lying outside their boundaries.[19] The payment received for such services would be acceptable for grant purposes as representing the proportionate share of treatment costs attributable to the service recipient.

Suburban improvement districts may contract to provide waste water treatment services for nearby (within ten miles) municipalities and may connect their sewers to those of any adjacent municipality or district.[20] Suburban and municipal inprovement districts which are debt free and contiguous may by contract operate their treatment facilities jointly.[21] Municipal improvement districts may join with any other political subdivision, or state or federal agency in the construction, acquisition, operation and financing of waste water treatment facilities.[22] In any joint or cooperative venture, the contractual apportionment of treatment costs will be acceptable for grant purposes as representing the proportionate share of treatment costs attributable to each service recipient. Therefore, in such cases the treatment agency will have authority to assure that each participating community will pay its proportionate share of treatment costs.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of Arkansas' waste water treatment agencies have specific authority to "cut off" service to municipalities or subdivisions being served by their facilities; further, it is unlikely that such an action would be judicially regarded as being within the scope of their necessary and proper powers. The authority, noted in section 1.1 above, of the Department of Pollution Control and Ecology to regulate waste discharges through the use of discharge permits is very near the power to refuse to receive wastes. This required power is, therefore, impliedly possessed by a state regulatory agency rather than a local management agency. In this manner the state complies with this grant requirement.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Arkansas' waste water treatment agencies are not required to connect their treatment facilities to communities or subdivisions outside their boundaries. With respect to such communities or subdivisions they can deny new "hook-ups." The power of the agencies to refuse to connect communities or subdivisions within their boundaries is much more limited. Further, as the non-compliance involved in such cases will often be attributable to the agency itself, denying new "hook-ups" would be meaningless as a sanction.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

No sanctions exist which would be applicable to municipalities or subdivisions as the charge system and penalties for violation of ordinances are designed to operate against individuals. Additionally, where the violator is an unincorporated subdivision or community there is no single individual against which sanctions could be applied.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

The authority of Arkansas' agencies to provide waste treatment

services, discussed in section 2.1 above, is sufficient to permit them to treat industrial wastes. Requiring pretreatment of industrial wastes is within the agencies' powers to the extent that pretreatment is necessary to protect the proper operation of their facilities. Absent such pretreatment, the agencies would necessarily be empowered to refuse industrial wastes in order to execute their waste water treatment function.

3.0 SUMMARY

In a number of areas Arkansas' waste water treatment agencies fail to comply with the specific grant requirements of the Act. Legislation is necessary in such areas in order to bring about compliance.

3.1 Deficiencies

1. Legislation will be required to authorize both municipal and suburban improvement districts to charge for waste water treatment services in a fashion complying with the grant requirements of the Act.

2. Legislation will be required to authorize each of the classes of treatment agency analyzed to recover from industrial users of their waste treatment works the federal portion of the construction costs of such works reasonably attributable to treatment of industrial wastes.

3. Legislation will be necessary to provide sanctions applicable to communities which do not comply with an areawide plan unless the Department of Pollution Control and Ecology exercises this authority.

4. Specific legislative authority should be provided allowing the agencies to require pretreatment, monitoring, and reporting by industrial dischargers.

4.0 BIBLIOGRAPHY

1. Municipal Improvement Bonds in Arkansas, 8 Ark. L. R. 146 (1954).

2. Pollution Control and Ecology in Arkansas (Undated, Department of Pollution Control and Ecology).

3. Arkansas Water Quality Standards (April 1972, Department of Pollution Control and Ecology).

4. Sparks, Jared, Arkansas Water Resources: Supply, Use, and Research Needs, Univ. of Arkansas, (1967).

FOOTNOTES

1. A.S.A. §§82-1901 through 82-1909, Act 108 of 1971 (Supp. 1971).
2. A.S.A. §§47-801, 47-811 through 47-813 (1964).
3. Cities and towns, A.S.A. §§19-4101, 19-4103; municipal improvement districts, A.S.A. §§20-311, 20-209 (Authority to operate is implicit in this section as it may apply revenues derived from operation of facilities to debt retirement. Further, there is no provision reversion of such facilities to municipality after retirement of construction debt.); suburban improvement districts, A.S.A. §§20-704(b), 20-718, 20-704.1(a).
4. A.S.A. §§82-1914 to 82-1914.2.
5. A.S.A. §20-704.1(b) (Supp. 1971).
6. A.S.A. §19-4113.
7. A.S.A. §20-209 (1968).
8. A.S.A. §19-4103.
9. A.S.A. §§19-4107, 19-4101.
10. A.S.A. §19-4103.
11. Suburban improvement districts, A.S.A. §20-716; municipal improvement districts, A.S.A. §20-201.
12. A.S.A. §§20-704.1(a), 20-311.
13. Const. Art. 16 §1. Fitzgerald v. Walker (1891) 55 Ark. 148, 175 S.W. 702.
14. A.S.A. §19-4101.
15. A.S.A. §19-4104.
16. A.S.A. §20-209 et seq.
17. A.S.A. §20-732.
18. A.S.A. §§19-4116, 14-901 through 14-908.
19. Cities and towns, A.S.A. §19-4263, municipal improvement districts, A.S.A. §20-332.
20. A.S.A. §20-704(j).
21. A.S.A. §20-732.
22. A.S.A. §20-704.1(b).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

LOUISIANA REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

The state agency in charge of water pollution control in Louisiana is the Stream Control Commission (Commission).[1] The Commission is headed by a chairman who is also the Commissioner of Wild Life and Fisheries. Other members of the Commission are the Director of Public Works, President of the State Board of Health, Commissioner of Agriculture and Immigration, Commissioner of Conservation, Executive Director of the Department of Commerce and Industry and the Attorney General.[2]

The State Board of Health also exercises some authority over water pollution control as it is the body with official jurisdiction over all waste disposal.[3] However, the Commission actually handles water pollution abatement.

Control over disposal of wastes by any person, corporation or municipality is held by the Commission.[4] As the watchdog of the state's waters, the Commission has authority to make any rules and regulations it deems necessary,[5] including the establishment of standards of water quality.[6] In addition, the Commission has enforcement authority[7] and may regulate, control or restrain the discharge of any waste material or polluting substance into state waters.[8]

A statutory prohibition on pollution makes it unlawful to discharge or permit to be discharged any wastes or pollution which destroy fish or injure the public health and welfare in violation of a Commission rule, order or regulation.[9] The Commission notifies violators and such violators must file a report within ten days.[10] Thereafter the Commission may make a final order to control the pollution source as it deems necessary.[11] If the violation continues after notification by the Commission, or if the alleged violator fails to make a report the attorney general may institute criminal proceedings.[12] Penalties up to $2000 per day, one year imprisonment, or both are provided.[13] Furthermore, the Commission is authorized

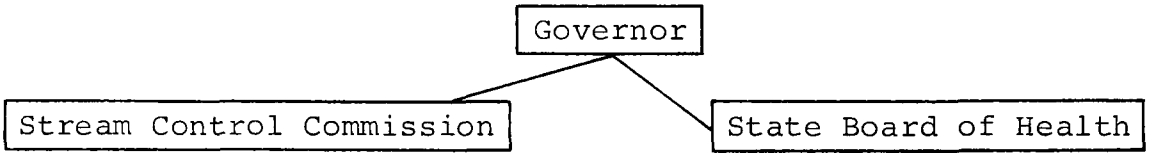
to bring civil damages suit against polluters for the amount necessary to restore the waters to their former condition.[14]

In 1970 the legislature enacted some new legislation regarding water pollution.[15] Included was a prohibition on discharging untreated wastes into public waters by any person, corporation, municipality or political subdivision.[16] The statute further provides that all wastes must receive the best practicable secondary treatment or its equivalent by December 31, 1972.[17] Violation of this law can result in a penalty of $10,000 for each day of violation.[18]

New legislation also provides for state grants to local agencies to assist them in construction of water pollution control projects.[19]

The actual construction and operation of sewage disposal and treatment works is done on the local level by sewage districts. These districts may be located outside municipalities,[20] inside municipalities,[21] and in municipalities of less than 1000 population.[22] The city of New Orleans is a separate district with authority for a sewage system.[23] Several sewage districts may be joined together in a consolidated district which may include areas within municipalities and in neighboring parishes.[24]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

All sewerage districts in Louisiana, whether inside or outside

a municipality, have the necessary authority to operate, maintain and construct sewage disposal works.[25] The district of the city of New Orleans has similar authority.[26]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

None of the local districts has express statutory authority to accept and utilize grants from any sources. However, this power can reasonably be implied from the broad powers the agencies have to enact all rules and regulations and do all things necessary or advantageous for the operation and use of the sewage systems.[27]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

The authority to levy front-footage assessments on owners or property is held by the local sewerage districts.[28] In addition, those districts which are outside municipalities, those inside larger municipalities and consolidated districts may collect rates and charges for their services.[29] Those districts established in municipalities with a population less than 1000 lack the express authority to collect rates and charges. The sewerage system of the city of New Orleans is free to users, being financed by a special tax levy.[30]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Although none of the local agencies has the express statutory authority required, it can reasonably be implied from other powers. For example, consolidated sewerage districts may base their rates on the number of water outlets on the user's property, along with the proportionate costs of operating, constructing and maintaining the sewage systems.[31] Therefore, rates based on the characteristics of the user's effluent should be permissable in these districts.

Districts in municipalities as well as those outside such municipalities may charge rates sufficient to pay the expenses of operation, repair and maintenance of the system.[32] From this it could be implied that rates based on the nature of the user's effluent would not be barred.

Municipal districts of less than 1000 population lack the necessary powers, as does the Water and Sewerage Board of New Orleans.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no express statutory authority for any of the treatment agencies to recover capital construction costs from industrial users. In both rural and municipal districts, however, the rates and charges may be computed so as to pay the principal and interest on revenue bonds.[33] Since these districts are able to determine rates sufficient to meet contractual obligations, the obligation to meet the terms of the EPA grant by recovering construction costs may reasonably be implied.

Consolidated districts have only a general charging authority, although rates must be sufficient to recover the proportionate costs of construction from all users.[34]

The city of New Orleans, as well as small municipalities (under 1000 population) lack the necessary charging authority to recover capital costs.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

The authority for short-term indebtedness may be implied from the ability of the districts to enter into contracts for construction. There is express authority for long-term indebtedness as described in the following paragraphs.

2.4.1 General Obligation Funding.

All sewerage districts have express constitutional authority to issue general obligation bonds.[35] Such bonds must be approved by a majority vote of the electors of the district and are financed by means of special tax.[36]

2.4.2 Special Funds and Revenue Funding

Revenue bonds may be issued to finance the construction or improvement of the treatment works in all sewerage districts.[37] Such bonds do not come under the statutory limitation of indebtedness.[38] The bonds must mature within 40 years and bear interest at no more than 8%.[39]

2.4.3 Other Methods of Financing

Bonds financed by the special assessment of real estate may be issued by all sewerage districts.[40] These bonds must bear interest not exceeding 6% and mature within 20 years.[41]

State grants are also available to aid local construction of water pollution control projects.[42]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

Although none of the sewerage districts is expressly empowered to charge participating communities proportionately, this authority might be implied from other powers. For example, municipalities have authority to consolidate and enlarge sewerage districts for the purpose of operating a sewerage system.[43] Similarly, parishes may create consolidated sewerage districts comprised of existing districts as well as territory not within an existing district.[44] When several districts or areas join together for common treatment of their wastewater, it would seem reasonable that they could agree to apportion the costs among the participants.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

The sewerage districts all lack the authority to cut-off non-complying municipalities. However, the State Stream Control Commission could have this authority through its ability to control and restrain the discharge of any wastes or pollutants.[45]

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

The power to prohibit new connections to the system is not expressly granted to any local districts. Sewerage districts may compel connection to the system, but there is no express statutory authority to prohibit such connections.[46]

If the noncompliance is a violation of the general statutory prohibition on pollution, the Stream Control Commission might possibly exercise authority to deny additional connections.[47]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

None of the sewerage districts possess the ability to assess penalties or other sanctions against municipalities.

The Stream Control Commission has the power to enforce pollution control regulations with penalties as described in paragraph 1.1.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

All local districts lack the express statutory authority to accept industrial wastes. Since the Stream Control Commission has the power to control the disposal of wastes by industries, it can reasonably be implied that the local treatment agencies can accept such industrial wastes.[48]

The New Orleans Sewerage and Water Board has the statutory ability to compel pretreatment of industrial wastes by its authority to make "rules and regulations to prevent the obstruction, interference with or damage to, the public systems of drainage, sewerage and water supply."[49] The power for the other local districts to require preliminary treatment might be implied from their general authority over sewage matters and their power to "maintain" their systems.[4]

3.0 SUMMARY

Louisiana is capable of meeting most of the requirements of the Act. The local treatment agencies either possess express statutory authority to meet the provisions, or else the necessary powers can reasonably be implied from other powers. Only a few deficient areas exist, and these are described in paragraph 3.1.

The state-wide agency, the Stream Control Commission, does not have such specific powers over functions such as planning, regulation and grant management as compared with most states. However, its generally broad authority to make rules and regulations as it deems necessary should be sufficient. The Commission also has very strong enforcement authority.

3.1 Deficiencies

The greatest deficiency in Louisiana is the lack of any authority to refuse to receive wastes from noncomplying municipalities. No authority exists at the local level to either cut-off service, deny new connections or assess penalties or other sanctions to such recalcitrant municipalities. New legislation granting the necessary authority would be helpful.

A less serious deficiency is the many areas in which authority is merely implied rather than expressly granted. Among these are the authority to accept grants, to charge rates based on the composition of the effluent, to recover capital construction costs, to apportion costs among communities and to receive industrial wastes. These implied powers would be more certain if expressly delegated by new legislation.

4.0 BIBLIOGRAPHY

1. Water Pollution in Louisiana: An Attempt at Control, 18 Loyola L. Rev. 734 (1972).

FOOTNOTES

1. La. Rev. Stat. Ann. §56:1431 (Supp. 1972).
2. Id.
3. La. Rev. Stat. Ann. §40:11 (Supp. 1972).
4. La. Rev. Stat. Ann. §56:1434 (1952).
5. La. Rev. Stat. Ann. §56:1435 (1952).
6. La. Rev. Stat. Ann. §56:1439 (1952).
7. La. Rev. Stat. Ann. §56:1437 (1952).
8. La. Rev. Stat. Ann. §56:1439 (1952).
9. La. Rev. Stat. Ann. §56:1440 (Supp. 1972).
10. La. Rev. Stat. Ann. §56:1441 (1952).
11. Id.
12. La. Rev. Stat. Ann. §56:1443 (1952).
13. La. Rev. Stat. Ann. §56:1444 (Supp. 1972).
14. La. Rev. Stat. Ann. §56:1446 (Supp. 1972).
15. La. Rev. Stat. Ann. §56:1461 et seq. (Supp. 1972).
16. La. Rev. Stat. Ann. §56:1464.1 (Supp. 1972).
17. Id.
18. La. Rev. Stat. Ann. §56:1464.2 (Supp. 1972).
19. La. Rev. Stat. Ann. §40:2321 et seq. (Supp. 1972).
20. La. Rev. Stat. Ann. §33:3881 (1966).
21. La. Rev. Stat. Ann. §33:3911 (1966).
22. La. Rev. Stat. Ann. §33:3951 (1966).

23. La. Rev. Stat. Ann. §33:4071 (1966).
24. La. Rev. Stat. Ann. §33:4051 (1966).
25. La. Rev. Stat. Ann. §§33:3885, 33:3912, 33:3951, 33:3962 (1966). See also §33:3981 (1966).
26. La. Rev. Stat. Ann. §33:4071 (1966).
27. La. Rev. Stat. Ann. §§33:3933, 33:3962, 33:3885, 33:3912 (1966).
28. La. Rev. Stat. Ann. §§33:3981, 33:3914, 33:3953, 33:3962 (1966).
29. La. Rev. Stat. Ann. §§33:3885, 33:4002, 33:3962, 33:3970 (1966).
30. See New Orleans Taxpayers' Protective Ass'n. v. Sewerage and Water Board of New Orleans, 132 La. 839, 61 So. 843 (1913).
31. La. Rev. Stat. Ann. §33:3970 (1966).
32. La. Rev. Stat. Ann. §§33:3885, 33:4002 (1966).
33. Id.
34. La. Rev. Stat. Ann. §33:3970.
35. Const. of La., Art. 14, §14(a), (c).
36. Id.
37. See La. Rev. Stat. Ann. §33:4251 et seq. which authorizes all districts empowered by Art. 14, §14 of the Constitution to issue general obligation bonds the power to also issue revenue bonds.
38. La. Rev. Stat. Ann. §33:4252 (Supp. 1972).
39. Id.
40. La. Rev. Stat. Ann. §33:3987 (1966).
41. Id.
42. La. Rev. Stat. Ann. §40:2321 et seq. (Supp. 1972).
43. La. Rev. Stat. Ann. §33:3961 (1966).
44. La. Rev. Stat. Ann. §33:4051 (1966).
45. La. Rev. Stat. Ann. §56:1439 (1952).
46. La. Rev. Stat. Ann. §33:4041 (1966).
47. La. Rev. Stat. Ann. §56:1439 (1952).
48. La. Rev. Stat. Ann. §56:1434 allows the Commission to control disposal of wastes by any person, and §56:1433 defines "person" so as to include industries.
49. La. Rev. Stat. Ann. §33:4081 (1966).

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NEW MEXICO REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Responsibility for adopting and regulating a water quality control program in New Mexico lies with that state's Water Quality Control Commission.[1] The Commission is composed of the director of the Environmental Improvement Agency, the secretary of the Oil Conservation Commission, the state engineer, the director of the state Parks and Recreation Commission, the director of the state Department of Agriculture, and a representative of the public appointed by the governor.[2] Working through the agencies represented,[3] the Commission is required to adopt water quality standards[4] and to adopt regulations for the prevention or abatement of water pollution.[5]

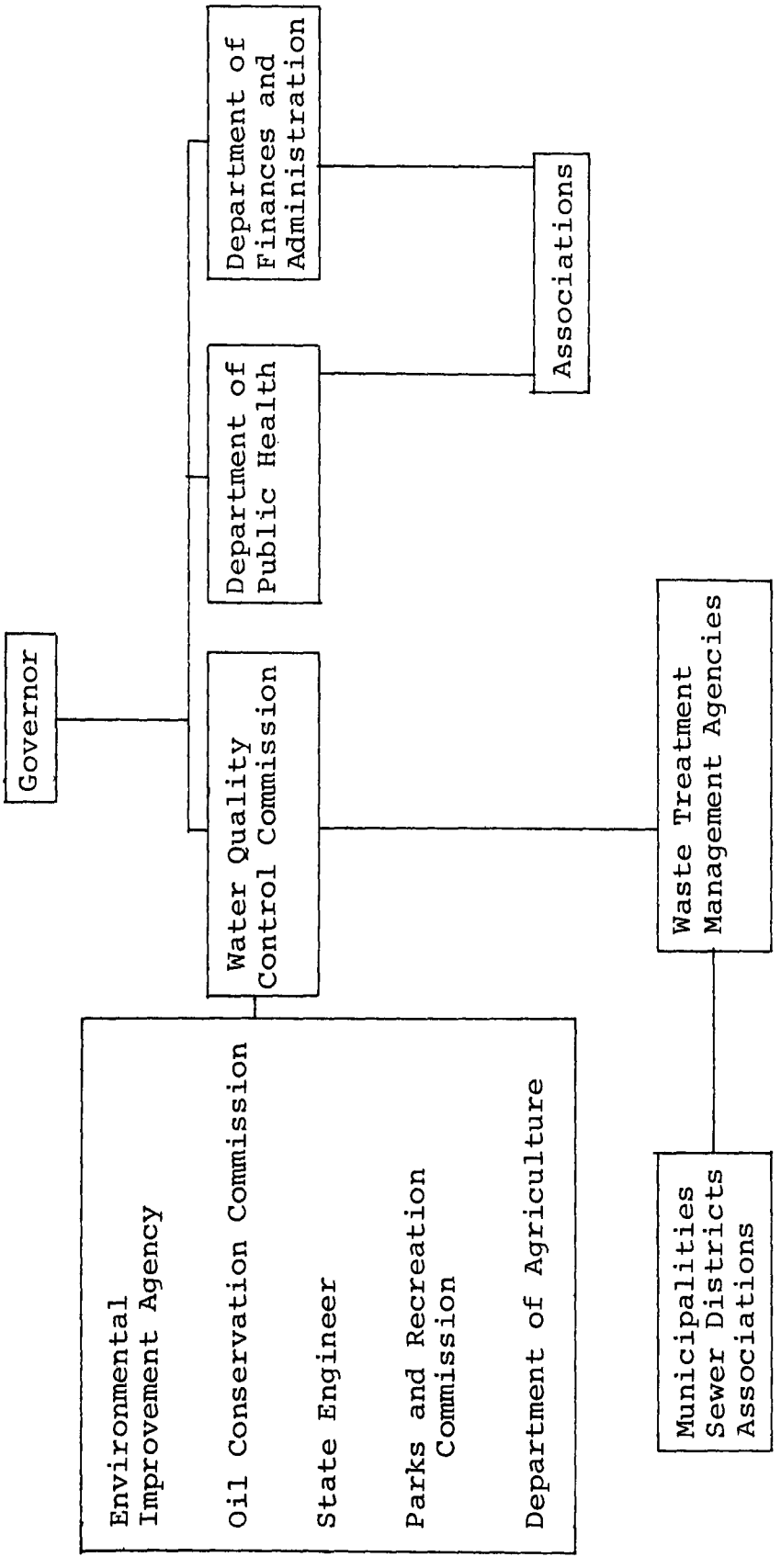
In order to carry out its responsibilities, the Commission may require the filing, with it or a member agency, of plans for the construction and operation of new sewer systems, treatment works, or sewage systems or for extension or modification of existing works and systems.[6] The Commission may also adopt regulations requiring notice to it or a member agency of intent to introduce or to permit the introduction of contaminants into the waters of the state.[7]

Adherence to the regulations established by the Commission is to be obtained if possible through voluntary cooperation by alleged or potential violators.[8] If this proves insufficient, enforcement is effected by civil suit.[9] If after investigation a constituent agency can show good cause to believe that a person is violating or threatens to violate a regulation, the Commission may initiate proceedings in county district court.[10] Remedies available to the Commission are injunctive relief[11] and civil penalties not exceeding one thousand dollars for each violation.[12]

At the local level waste treatment facilities may be operated by municipalities,[13] sanitation districts[14] and associations[15] formed under the Sanitary Projects Act[16] [hereinafter referred to as associations]. Municipalities are defined as any incorporated city, town, or village, incorporated county

and class H counties.[17] Sanitation districts may include parts or all of one or more counties.[18] An association may be formed by a rural unincorporated community[19] that has been in existence longer than twenty five years[20] or by a combination of such communities.[21]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Municipalities and sanitation districts have clear statutory authority to design and construct new works and to operate new and existing waste treatment facilities.[22]

Associations formed to provide sewerage treatment services must receive approval of the state department of finance and administration for the construction of the original works.[23] Once the works are completed the association has authority to operate these works.[24] Associations operating existing works have implicit authority to design and construct new works.[25]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All three types of management agencies have clear statutory authority to accept grants from the Federal government.[26] Each also has implicit authority to receive grants or other funds from sources other than the Federal government.[27]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Municipalities and Sanitation Districts have express authority to establish rates and charges for their services.[28] If either of these management agencies utilize revenue bond financing [see 2.4.2] such rates and charges are mandatory.[29] An Association is required to assess users of their facilities on a monthly basis in order to provide an amount sufficient to insure proper operation and maintenance of the facility.[30]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Municipalities may levy "a just and reasonable service charge,

upon a front-foot, volume of sewage, number of outlets or other equitable basis."[31] This provision should be sufficient authority to charge categories of users their proportionate share.

Sanitation districts have no express authority to charge categories of users based on characteristics of effluents. Rates established by the district must be approved by the New Mexico Public Service Commission.[32] Sanitation districts do not fall within the definition of public utility;[33] however, since the district's rates must be approved by the Public Service Commission it is reasonable to assume that these rates must follow the statutory guidelines[34] for public utility rates that are regulated by the Public Service Commission.[35] These guidelines provide that rates are to be just and reasonable[36] and that rate schedules may be established by reasonable classification of users.[37] From these provisions it can be implied that sanitation districts do have authority to charge on the basis of characteristics of effluent.

Associations have neither express nor implied authority to charge on the basis of the characteristics of effluents. Their authority is limited to making monthly assessments against users.[38]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the local management agencies have express statutory authority to comply with this requirement. A municipality has implicit authority to recover these costs from industry since it may levy charges for the construction of works,[39] if the charges are levied on an equitable basis.[40]

As noted in §2.3.1 supra sanitation districts in determining their rates are to be guided by the statutory provisions applicable to public utility rates. These provisions allow rate schedules to be set for different categories of users, as long as these classifications are reasonable.[41] Hence it can be reasonably implied that districts have authority to comply with this requirement.

Associations do not have any express or implicit authority to recover these costs from industry.

2.4 Authority to Incur Short-and Long-Term Indebtedness [§208(c)(2)(F)].

Municipalities and sanitation districts have authority to incur indebtedness.[42] Associations, however, are limited in this regard as they are allowed only to incur indebtedness through revenue bond funding.[43]

Constitutional limitations on the amount of debt incurred by municipalities and other political subdivisions do not apply to indebtedness for the construction of sewer facilities.[44]

2.4.1 General Obligation Funding.

Municipalities and sanitation districts may issue general obligation bonds,[45] subject to the approval of the respective electorates.[46] Associations are denied authority to utilize this method of financing.[47]

2.4.2 Special Funds and Revenue Funding.

All three local management agencies have authority to issue revenue bonds.[48] If municipalities and sanitation districts issue revenue bonds, they must establish rates sufficient to pay operating expenses, to pay interest on the revenue bonds, and to provide an adequate sinking fund.[49] These rates must remain in effect until the bond issue is liquidated.[50]

Associations have restricted authority to issue revenue bonds. Both the department of public health and the department of finance and administration must approve the issuance,[51] such approval to be based on proper showing by the association that the indebtedness is necessary for expansion or improvement and that the financial condition and future income of the association warrants approval.[52]

2.4.3 Other Methods of Financing.

All three types of local management agencies may be eligible to share in the proceeds of severance tax bonds[53] issued by the state to assist in the construction of sewage treatment facilities.[54]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

There is no specific statutory provision granting this authority to any of the local management agencies.

Such authority for municipalities can reasonably be implied from the provision granting authority to charge users for services.[55]

Sanitation districts have implicit authority to fulfill this requirement since unreasonable differences as to rates between localities are prohibited.[56]

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

There is no express statutory provision granting to any of the local agencies the authority to cut off services to municipalities. The only provisions from which this authority might be implied are those granting authority to adopt rules and regulations for the administration of the respective agencies.[57]

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

None of the three types of local agencies have this authority, but as noted in paragraph 1.1 the state Commission has broad enforcement powers.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

There is no statutor provision granting this authority to waste treatment management agencies, but as noted in paragraph 1.1 the state Commission has power to seek injunctions and damages in court actions.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

There is no statutory authority either granting or denying management agencies authority to treat industrial wastes. Statutory provisions regarding all three types of agencies grant authority to treat sewage[58] but the provisions do not define this word. It might be reasonably implied that this item includes industrial wastes. Likewise, even though there is no statutory provision granting such authority, it is implicit that treatment agencies can refuse to treat industrial wastes.

3.0 SUMMARY

With the exception of one subject area, municipalities and sanitation districts seem to have sufficient statutory authority to comply with the requirements for construction grants. This one area, as noted in the following section, is the authority to refuse wastes from noncomplying communities.

Associations, however, lack statutory authority to comply with several requirements. These are noted in the following section.

3.1 Deficiencies

All three types of local waste treatment management agencies lack authority to refuse to treat wastes of communities not in compliance with any provision of an areawide plan. [See §§2.6, 2.6.1, 2.6.2.] Legislation granting this authority is needed.

Associations lack authority (1) to charge categories of users based on characteristics of effluents [See §2.3.1] and (2) to assure that each participating community pay its proportionate share of treatment costs [see §2.5]. Legislation granting such authority is needed.

Finally, for the sake of clarity, legislation should be passed granting all three types of agencies the authority to recover costs from industries [see §2.3.2] and (2) to accept/refuse industrial wastes for treatment [see §2.7].

4.0 BIBLIOGRAPHY

1. Control of Industrial Water Pollution in New Mexico, 9 Natural Resources J. 653. (1969).

FOOTNOTES

1. N.M. Stat. Ann. §75-39-4, (1968).
2. N.M. Stat. Ann. §75-39-3, (Supp. 1971).
3. N.M. Stat. Ann. §75-39-4(E), (Supp. 1971).
4. N.M. Stat. Ann. §75-39-4(C), (1968).
5. N.M. Stat. Ann. §75-39-4(D), (1968).
6. N.M. Stat. Ann. §75-39-4(H), (Supp. 1971).
7. N.M. Stat. Ann. §75-39-4(I), (Supp. 1971).
8. N.M. Stat. Ann. §75-39-9(A), (Supp. 1971).
9. Id.
10. Id.
11. Id.
12. N.M. Stat. Ann. §75-39-59(B), (Supp. 1971).
13. N.M. Stat. Ann. §14-25-1(A), (Supp. 1971).
14. N.M. Stat. Ann. §75-18-2(B), (1968). Sanitation districts may be operated jointly with water districts.
15. N.M. Stat. Ann. §14-28-12(A), (Supp. 1971).
16. N.M. Stat. Ann. §14-28-1 to 14-28-19, (1968).
17. N.M. Stat. Ann. §14-1-2 (G & H) (Supp. 1971).
18. N.M. Stat. Ann. §75-18-3, (1968).
19. N.M. Stat. Ann. §14-28-2(A), (1968).
20. N.M. Stat. Ann. §14-28-5(B), (1968).
21. N.M. Stat. Ann. §14-28-2(A), (Supp. 1971).
22. N.M. Stat. Ann. §14-25-1(A), (Supp. 1971), (Municipalities); §§75-18-28, 75-18-14(H), (1968) (Sanitation Districts).
23. N.M. Stat. Ann. §14-28-4, (Supp. 1971).
24. N.M. Stat. Ann. §14-28-12(A), (Supp. 1971).
25. N.M. Stat. Ann. §14-28-15(B), (1968).
26. N.M. Stat. Ann. §14-36-6, (1968), Municipalities, §75-18-14(D), (1968), Sanitation Districts, §14-28-7(B), (1968), Associations.
27. N.M. Stat. Ann. §14-17-1, (1968), Municipalities; §75-18-14 (D & N), (1968) Sanitation Districts; §14-28-15 (a), (1968), Associations.
28. N.M. Stat. Ann. §§14-25-2, (1968), 14-17-1(H) (Supp. 1971) Municipalities, §75-18-14(L), (1968) Sanitation Districts.
29. N.M. Stat. Ann. §14-30-6, (Interim Supp. 1972) Municipalities, §75-18-37, (1968) Sanitation Districts.
30. N.M. Stat. Ann. §14-28-12(C), (1968).
31. N.M. Stat. Ann. §14-25-2(A), (1968).
32. N.M. Stat. Ann. §75-18-14(L), (1968).
33. N.M. Stat. Ann. §68-3-2, (Supp. 1971).
34. N.M. Stat. Ann. §§68-6-1 to 68-6-8, (1961).
35. N.M. Stat. Ann. §68-5-4, (1961).

36. N.M. Stat. Ann. §68-6-1, (1961).
37. N.M. Stat. Ann. §68-6-4, (1961).
38. N.M. Stat. Ann. §14-28-12(C), (1968).
39. N.M. Stat. Ann. §14-25-2(A), (1968).
40. Id.
41. N.M. Stat. Ann. §68-6-4, (1961).
42. N.M. Const. Art. 1X, §12, Municipalities; N.M. Stat. Ann. §75018-14(e), (1968) Sanitation Districts.
43. N.M. Stat. Ann. §14-28-15(B), (1968).
44. N.M. Const. Art. 1X, §13.
45. N.M. Stat. Ann. §14-29-5(R), (1968), Municipalities; §75-18-24, (1968), Sanitation Districts.
46. N.M. Stat. Ann. §14-29-6, (1968) Municipalities, §75-18-24, (1968), Sanitation Districts.
47. N.M. Stat. Ann. §14-28-15(B), (1968).
48. N.M. Stat. Ann. §14-30-1.1, (Supp. 1971), Municipalities; §75-18-33 (1968), Sanitation Districts.
49. N.M. Stat. Ann. §14-29-6(A), (1968), Municipalities; §75-18-37 (1968), Sanitation Districts.
50. N.M. Stat. Ann. §14-29-6(A) (1968), Municipalities; §75-18-37, (1968), Sanitation Districts.
51. N.M. Stat. Ann. §14-28-15B, (1968).
52. Id.
53. N.M. Stat. Ann. §72-18-29, (1961).
54. N.M. Stat. Ann. §§72-18-37.16, 72-18-37.17 (Supp. 1971).
55. N.M. Stat. Ann. §14-25-2(A), (1968).
56. N.M. Stat. Ann. §68-6-6, (1961).
57. N.M. Stat. Ann. §14-25-3(B), (1968), Municipalities; §75-18-14(H), (1968), Sanitation Districts; §14-28-12(D), (1968) Association.
58. N.M. Stat. Ann. §14-25-1(A) (Supp. 1971), Municipalities; §75-18-2(B), (1968), Sanitation Districts; §14-28-12, (Supp. 1971), §14-28-3, (1968), Associations.

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OKLAHOMA REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Responsibility for environmental control and prevention of pollution in Oklahoma is vested in the Department of Pollution Control.[1] The Department is administered by the Pollution Control Coordinating Board[2] which is composed of the heads of seven state agencies and departments and two members appointed by the governor.[3] The Board's primary function is to coordinate the pollution control efforts of its constituent agencies,[4] and it may compel the member agencies to take investigative actions.[5] In certain circumstances the Board may act on its own initiative[6] and after appropriate hearings may issue orders to prevent or abate pollution.[7] Violation of such an order is a misdemeanor and is punishable by fine or imprisonment or both.[8] Injunctive relief is also available.[9]

Two of the member agencies, the Oklahoma Water Resources Board (OWRB) and the State Department of Health, have express responsibilities regarding control of water pollution.[10] The OWRB is assigned several functions among which are developing programs for prevention, control and abatement of water pollution,[11] establishing water quality standards,[12] and collecting and disseminating information regarding water pollution control.[13] The OWRB is also the primary regulatory agency for industrial wastes. Permits must be obtained from the Board in order to: (1) construct, modify, or operate an industrial disposal system; (2) increase the volume or strength of industrial waste discharges; (3) construct, install, modify or operate any commercial establishment or industry which would increase the discharges of wastes into waters of the state; and (4) to construct any new outlet for discharge of industrial wastes.[14] The Board may issue orders to fulfill its responsibilities;[15] violations of these orders are misdemeanors.[16]

The State Board of Health establishes standards, rules, and regulations for the construction and extension of sewer systems, sewage treatment plants and facilities connected therewith.[17] In addition the Department of Health must operate a system of control tests and laboratory checks of sewage treatment plants on at least a monthly basis.[18] Permits must be

obtained from the State Commissioner of Health before construction may begin on sanitary sewer systems, sewage or waste treatment plants or for any extension thereof.[19] Permits must also be obtained before there can be any discharge of sewage into waters of the state.[20] Additionally, sixty days notice must be given to the State Commissioner of Health before industrial wastes can be discharged into a sewer.[21] Such notice must include information regarding volume, strength, and chemical constituents of the waste in order that the effect of such waste on treatment plants and the receiving waters may be evaluated.[22]

An additional responsibility of the State Commissioner of Health is to license sewage treatment plant operators.[23] Such treatment plants as designated by the Commissioner[24] may not be operated unless there is a licensed operator in charge.[25]

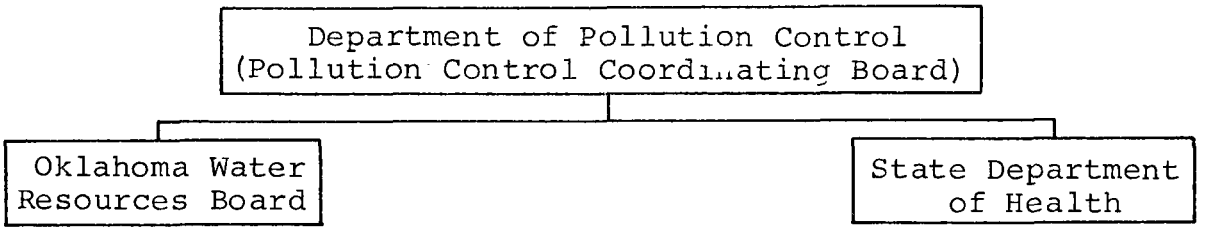
Waste treatment management agencies are operated by rural sewer districts,[26] sewer improvement districts,[27] and public trusts.[28] Municipal corporations seemingly could own and operate waste treatment facilities;[29] however, there is no specific statutory authority to this effect.

Rural Sewer Districts may be formed to serve areas outside the limits of incorporated municipalities; however, such municipalities of less than 5,500 in population may be included.[30]

Sewer improvement districts may be formed by areas within a county susceptible of being served by a common sewer system for domestic uses.[31] There is some authority that a sewer improvement district may not include areas within an incorporated community.[32]

Public trusts can be created to operate utilities for the benefit of municipalities, counties, or other political or governmental subdivisions.[33] The powers of the trustee are set forth in the instrument creating the trust, and the terms of the instrument are controlling.[34]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

As noted in the preceding section, municipalities presumably may operate waste treatment facilities. The Oklahoma Constitution authorizes municipalities to engage in business[35] and this authority is repeated in the statutes.[36] Additionally cities and towns have statutory authority to construct and maintain sewer lines.[37] In the absence of specific statutory authority concerning waste treatment facilities operated by municipalities, all authorities required by §208(c)(2) must be implied from this general grant of authority to carry on business. Therefore, to avoid repetition, municipalities' authorities will not be discussed in the following sections, except for §2.4 regarding authority to incur short- and long-term indebtedness.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Rural districts have express statutory authority to meet the requirements of this section,[38] as do sewer improvement districts.[39]

Public trusts can be created to further any proper function of the beneficiary of the trust.[40] Assuming construction and operation of waste treatment works are proper functions of cities, towns, and counties, public trusts can be created to perform these functions.[41] If the authority to build new works and to operate new and existing works is contained in the trust instrument this should be sufficient to meet the requirements of this section.[42]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Rural districts have express authority to accept federal grants.[43] These districts have implicit authority to accept grants from sources other than the federal government.[44] For the other management agencies this authority might be implied from their general powers, as in the case of sewer improvement districts,[45] or in the case of public trusts this authority could be included within the trust instrument.

The Pollution Control Coordinating Act[46] states that the State Department of Health is to be the recipient of federal funds to administer the Construction Grants Program for municipal treatment works.[47] There are no statutory provisions delineating the Department's role as a recipient of these funds. Regulations of the Department could insure that grants not be diverted thereby avoiding any potential problem.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Rural districts and sewer improvement districts have express statutory authority to charge for their services.[48]

Since public trusts may issue revenue bonds [see §2.4.2] such agencies have implied authority to charge for services. Such authority could be reinforced if it is contained in the trust instrument.[49] The governmental or political subdivisions which are the beneficiaries of the trust must retain control of the rates and charges levied by the trustees.[50]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

There is no express statutory provision authorizing any of the agencies to base their charges on characteristics of effluents discharged by the users; however, this authority may be implied for all the agencies. Rural districts' charges must be just, reasonable and nondiscriminatory;[51] charges for sewer improvement district services may be made as the Board of Directors deems expedient.[52] While there are no similar provisions governing charges levied by trustees of a public trust, it is

reasonable to assume such equitable limitations apply. These descriptions of the authority to charge would impliedly allow charges to be based on characteristics of effluent. This implication is strengthened by an expression of legislative concern that notice of discharge of industrial wastes contain information about the volume, strength, and chemical constituents of the waste to be discharged.[53]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the local management agencies have express authority to recover these costs from industry.

As noted in the preceding section, authority to establish rates and charges by the agencies is limited by general considerations of reasonableness. Implicit in such authority is the power to base charges so as to meet the agency's contractual obligation. This implicit authority could be sufficient to meet the requirements of this section.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All management agencies, as noted below, have authority to incur indebtedness.

The method of financing employed by sewer improvement districts is neither strictly general obligation funding nor revenue funding. These districts may issue bonds on which the principal and interest are paid by assessments levied against the property within the districts.[54] The bond issue can be made only after approval by the electorate.[55]

2.4.1 General Obligation Funding.

Financing the purchase, construction or repair of municipally owned and operated waste treatment facilities is limited to this method of financing.[56] The restriction is imposed by the state Constitution,[57] which requires that every such bond issue be approved by the electorate and that an annual tax be levied to pay the principal and interest of the bonds.[58]

2.4.2 Special Funds and Revenue Funding.

Rural districts may issue bonds secured by the districts' property, assets and revenues.[59] Rates and charges of the district must be sufficient to pay the principal and interest on such indebtedness.[60]

Public trusts have authority to issue revenue bonds.[61] Prior to incurring such indebtedness, if the issue is greater than 5% of the existing debt of the trust, two-thirds of the governing body of the beneficiary must vote their approval.[62]

2.4.3 Other Methods of Financing.

Municipalities may utilize a lease-purchase method of financing.[63]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

There is no specific statutory provision granting this authority to any of the management agencies. As noted in §2.3.1 supra all the management agencies have implicit authority to charge different categories of users for services. This authority should encompass the authority to assure each participating community pay its fair share.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of the management agencies have express authority to refuse to treat wastes from a non-complying municipality. All agencies, however, have authority to make rules and regulations,[64] or, in the case of rural districts, authority to exercise all powers necessary to carry out their functions.[65] From these general powers might be implied the authority to "cut-off" existing services.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

There is no statutory provision expressly granting this authority to any of the management agencies. As in the preceding section,

this authority might be implied from the general powers of the respective agencies.[66] It should be noted that the powers of the state regulatory agencies in this area, as described in §1.1, are far reaching, and these state regulatory agencies could perform this function.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities Or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

There is no statutory provision authorizing any management agencies to impose such sanctions, and as in §2.6.1 the only provisions from which such authority might be implied are the sections concerning general powers.[67] Also, the powers of the state regulatory agencies in this regard should be noted as described in paragraph 1.1.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

No management agency has express authority to accept or refuse industrial wastes.

Rural districts can provide services to all subscribers,[68] and any firm, corporation or partnership may be a subscriber.[69] Implicit in these provisions is the authority to accept for treatment industrial wastes.

Public trusts with municipalities as beneficiaries presumably will provide service to all the residents within the community, including industry, if any. The authority to accept or refuse industrial wastes should be contained in the trust instrument.[70]

Sewer inprovement districts are established to provide common sewer systems for domestic uses.[71] This legislative statement of purpose seemingly excludes authority for the district to treat industrial waste.

All agencies should reasonably have the power to require pretreatment of industrial wastes, at least where necessary to protect the treatment works.

3.0 SUMMARY

Rural districts and public trusts have either express or implicit authority sufficient to meet the requirements for construction grants, with one major exception. This exception is noted in the following sections.

Sewer improvement districts also meet most of the requirements with two exceptions as noted below.

3.1 Deficiencies

All management agencies lack express authority to refuse to treat wastes from noncomplying communities [§§2.6, 2.6.1, and 2.6.2]. Also it is not clear whether such authority can be implied for these agencies.

Sewer improvement districts apparently are not authorized to treat industrial wastes [§2.7].

There are no statutory guidelines as to how the State Department of Health is to serve as recipient of federal funds for construction programs [§2.2]; however, this may not be a problem since in practice the Department may serve only as a conduit or auditor of funds.

Legislation granting authority or clarifying existing authority so as to remedy these deficiencies is desirable.

4.0 BIBLIOGRAPHY

1. Comment, Water and Watercourses: Water Pollution Laws and Their Enforcement in Oklahoma, 22 Okla. L. Rev. 317, (1969).

FOOTNOTES

1. Okla. Stat. Ann. Tit. 82, §932(a) (Supp. 1972).
2. Okla. Stat. Ann. Tit. 82, §932(b) (Supp. 1972).
3. Okla. Stat. Ann. Tit. 82, §932(b) (Supp. 1972). These are the State Commissioner of Health, the Director of the Oklahoma Water Resources Board, the Director of the Department of Wildlife Conservation, the Chairman of the Oklahoma Corporation Commission, the Director of Industrial Development and Parks Department and the Executive Director of the Soil Conservation Board.
4. Okla. Stat. Ann. Tit. 82, §934(a) (Supp. 1972).
5. Okla. Stat. Ann. Tit. 82, §934(b) (Supp. 1972).
6. Okla. Stat. Ann. Tit. 82, §934(c) (Supp. 1972).
7. Okla. Stat. Ann. Tit. 82, §936(c) (Supp. 1972).
8. Okla. Stat. Ann. Tit. 82, §937(a) (Supp. 1972).
9. Okla. Stat. Ann. Tit. 82, §937(d) (Supp. 1972).
10. OWRB -- Okla. Stat. Ann. Tit. 82, §926.3 (Supp. 1972). State Dept. of Health. Okla. Stat. Ann. Tit. 63, §§1-904 and 1-905 (1973).

11. Okla. Stat. Ann. Tit. 82, §926.3(1) (Supp. 1972).
12. Okla. Stat. Ann. Tit. 82, §926.3(6) (Supp. 1972).
13. Okla. Stat. Ann. Tit. 82, §926.3(5) (Supp. 1972).
14. Okla. Stat. Ann. Tit. 82, §926.4 (Supp. 1972).
15. Okla. Stat. Ann. Tit. 82, §926.3(8) (Supp. 1972).
16. Okla. Stat. Ann. Tit. 82, §926.10 (Supp. 1972).
17. Okla. Stat. Ann. Tit. 63, §1-904 (1973).
18. Okla. Stat. Ann. Tit. 63, §1-904 (1973).
19. Okla. Stat. Ann. Tit. 63, §1-908(a) (1973).
20. Id.
21. Okla. Stat. Ann. Tit. 63, §1-908(e) (1973).
22. Id.
23. Okla. Stat. Ann. Tit. 59, §1107 (1971).
24. Okla. Stat. Ann. Tit. 59, §1102(b) (1971).
25. Okla. Stat. Ann. Tit. 59, §1106 (1971).
26. Okla. Stat. Ann. Tit. 82, §1324.3 (Supp. 1972). These districts may function alone or in conjunction with rural water districts and rural solid waste management districts.
27. Okla. Stat. Ann. Tit. 19, §879 (1962).
28. Okla. Stat. Ann. Tit. 60, §176 (1971).
29. Okla. Const. Art. 18, §6; Okla. Stat. Ann. Tit. 11, §563 (Supp. 1972).
30. Okla. Stat. Ann. Tit. 82, §1324.2 (Supp. 1972).
31. Okla. Stat. Ann. Tit. 19, §871 (1962).
32. Op. Atty. Gen. No. 70-156 (May 7, 1970).
33. Okla. Stat. Ann. Tit. 60, §176 (1971). See also, comment, Charitable Trusts: A Method of Financing Public Utilities, 9 Okla. L. Rev. 222 (1956).
34. Okla Stat. Ann. Tit. 60, §178 (1971).
35 Okla. Constit. Art. 18, §6.
36. Okla. Stat. Ann. Tit. 11, §563 (Supp. 1972).
37. Okla. Stat. Ann. Tit. 11, §270.1 (Supp. 1972); Tit. 11 §271 (1959).
38. Okla. Stat. Ann. Tit. 82, §1324.10(3) (Supp. 1972).
39. Okla. Stat. Ann. Tit. 19, §875 (1962).
40. Okla. Stat. Ann. Tit. 60, §176 (1971).
41. See Meder v. City of Oklahoma City, Okl., 350 Pzd. 916 (1960).
42. Okla. Stat. Ann. Tit. 11, §178 (1971).
43. Okla. Stat. Ann. Tit. 82, §1324.10(4) (Supp. 1972).
44. Okla. Stat. Ann. Tit. 82, §1324.10(3) (Supp. 1972).
45. Okla. Stat. Ann. Tit. 19, §874 (1962).
46. Okla. Stat. Ann. Tit. 82, §§931 to 940 (1972).
47. Okla. Stat. Ann. Tit. 82, §934(k) (Supp. 1972).
48. Rural: Okla. Stat. Ann. Tit. 82, §1324.10(10) (Supp. 1972); Sewer Imp. Dist. Okla. Stat. Ann. Tit. 19, §892 (1962).
49. Okla. Stat. Ann. Tit. 60, §178 (1971).
50. Okla. Const. Art. 18, §7; State ex. rel. Williamson v. Garrison, Okla. 348 P 2d 859 (1960).

51. Okla, Stat. Ann. Tit. 82, §1324.10(10) (Supp. 1972).
52. Okla. Stat. Ann. Tit. 19, §892 (1962).
53. Okla. Stat. Ann. Tit. 63, §1-908(e) (1973).
54. Okla. Stat. Ann. Tit. 19, §884, 886 (1962).
55. Okla. Stat. Ann. Tit. 19, §884 (1962).
56. State ex rel R.J. Edwards, Inc. v. Keith 179 Okl 563. 66P2d 1059, (1937).
57. Okla. Const. Art. 10, §27.
58. Id.
59. Okla. Stat. Ann. Tit. 82, §1324.10(4) (Supp. 1972).
60. Okla. Stat. Ann. Tit. 82, §1324.11 (Supp. 1972).
61. Okla. Stat. Ann. Tit. 60, §176 (1971); Fort v. Oklahoma Industries, Inc., Okl., 385 P2d. 470 (1963).
62. Okla. Stat. Ann. Tit. 60, §176(10) (1971).
63. Okla. Stat. Ann. Tit. 11, §563 (Supp. 1972).
64. Sewer Imp. Dist.: Okla. Stat. Ann. Tit. 19, §879 (1962); Public Trusts: Okla. Stat. Ann. Tit. 19, §178 (1971).
65. Okla. Stat. Ann. Tit. 82, §1324.10(12) (Supp. 1972).
66. Rural Dist. Okla. Stat. Ann. Tit. 82, §1324.10(12) (Supp. 1972). Sewer Imp. Dist. Okla. Stat. Ann. Tit. 19, §879 (1962) Public Trusts Okla. Stat. Ann. Tit. 60, §178 (1971).
67. Id.
68. Okla. Stat. Ann. Tit. 82, §1324.12 (Supp. 1972).
69. Okla. Stat. Ann. Tit. 82, §1324.2 (Supp. 1972).
70. Okla. Stat. Ann. Tit. 60, §178 (1971).
71. Okla. Stat. Ann. Tit. 19, §871 (1962).

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TEXAS REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Waste treatment management and pollution control agencies in Texas are divided into four overlapping and interwoven categories: state water administration, river compacts, general law districts and local city, town and municipal corporation authorities. Under state water administration, the Water Quality Board is the principal authority in the state on matters relating to the quality of water and "[a]ll other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the board."[1] This board is responsible for comprehensive, general planning to control the state's water quality.[2] Plans affecting designated areas shall be developed in consultation with local governments and federal and state agencies having a legitimate interest therein or otherwise affected by the plan.[3] The board also has the sole and exclusive authority to set water quality standards[4] and in furtherance of this authority it may establish reasonable rules in the regulation of waste charges.[5] In the process of such regulation the board operates a permit system[6] which derives considerable strength from the proscription of any discharges without a permit or other legislative authorization that inter alia causes or will cause the pollution of any state waters.[7] The board has the supplemental authority to directly "regulate and set the requirements and conditions for the discharge of any waste" from any particular activity not appropriately subject to a permit.[8] The board also must approve the plans for the construction or material alteration of any sewer system or facilities not otherwise subject to the approval of the State Department of Health or the Texas Water Rights Commission.[9] To compel compliance with "the rules, orders, permits or other decisions of the board" made pursuant to the above authority, it is authorized to institute court enforcement proceedings.[10]

Under the Water Quality Board regional or areawide waste collection, treatment and disposal systems may be established to promote inter-governmental coordination in the efficient

development of water resources.[11] Broad authority is given to the board in its supervision of these systems by its regulatory power over construction and improvement plans, permit denials and rescissions, and all waste discharges.[12]

Other regional planning of water quality and control in river basins is lodged in river authorities of one or more counties governed by directors appointed by the governor or the Water Rights Commission.[13] This planning process is subject to the continuing supervision of the Water Quality Board.[14] These planning efforts are to be coordinated with other public planning agencies having a significant interest in any segment of an affected river basin.[15] A component of this planning process is exercised by the Water Development Board through its power to define and designate river basins as separate units for water development.[16]

The river compacts are inter-state agreements on the regulation and control of water use[17] and not water pollution.

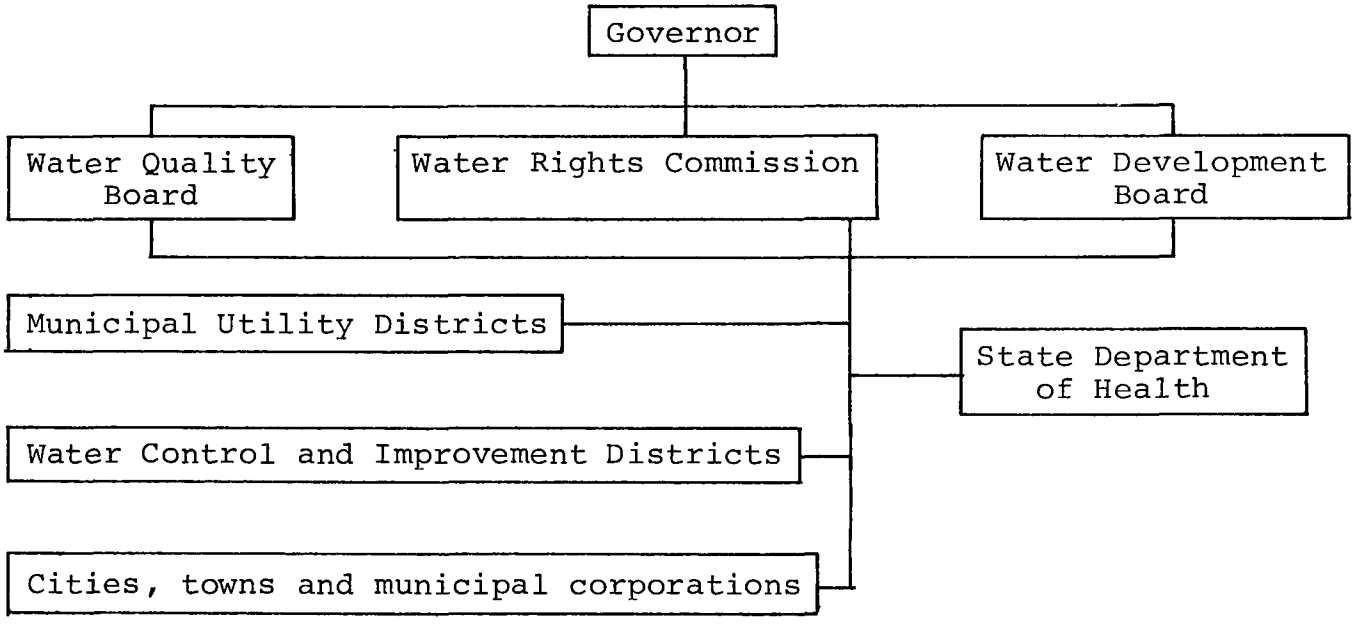
The eight general law districts cover a wide field of water management; however, only two of those districts are important here. First are the municipal utility districts created and operated under Article XVI, Section 59 of the Texas Constitution.[18] These districts are primarily waste treatment management agencies created by the Water Rights Commission.[19] Second are the Water Control and Improvement Districts which are created under Article XVI, Section 59 for the protection, preservation and restoration of the purity and sanitary condition of water within the state.[20] These districts "may include all or any part of one or more counties, including any town, village, . . . municipal corporation, [or] any other political subdivision of the state."[21] Accordingly these districts may take form as municipal districts with a population of 30,000 or more and an assessable real estate value of at least fifty million dollars;[22] as master districts made up of one or more general law districts other than municipal utility districts;[23] or as a district composed singly of any city, town or municipal corporation.[24] This flexibility in the scope of any Water Improvement District is an attempt to coordinate the facilities and pool the resources of homogeneous areas.[25]

Local city, town and municipal corporations are currently of three types: those incorporated under the general law, under special legislation, and under home rule charter.[26] Home

rule cities are covered by some portions of the general law on public utilities as noted; otherwise, they are governed under delegated home rule powers. All three types of cities have waste treatment management authority.

Supplementing these four categories of state water legislation is the State of Texas Water Pollution Control Compact whose signatories -- official agencies operating on a multiple county or regional basis -- agree collectively to pay 25 percent of the estimated cost of all water pollution control projects in the state. The purpose of the compact is to enable the state to take advantage of increased federal grants based on the level of state payments.[27]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208 (c)(2)(C)].

The municipal utility districts are authorized to construct, operate and maintain sanitation facilities inside or outside of its boundaries[28] and to provide service by contract[29] to contiguous areas or those within the vicinity of the district.[30] These service abilities are, however, subject to the state policy of encouraging areawide systems.[31] Water Control and Improvement Districts are also given the same powers to construct, operate and maintain sanitation facilities[32] and to serve other areas outside the districts by contract.[33] However, in giving service to areas outside the district, the contract may not imperil the ability of the district to serve its own lawful demands.[34]

Regional or areawide systems are also authorized to construct, operate and maintain one or more disposal systems,[35] purchase sewer systems by contract,[36] or lease from any person any required sewer system.[37] These districts also have the power to serve any person or public agency outside the boundaries of the district.[38]

Home rule cities are authorized to construct, operate and maintain a sewerage system.[39] Special and general law municipalities have this same authority and may additionally extend the lines of the system outside of its boundaries and sell the services of the system to any person or corporation and permit them to connect with the system.[40] Furthermore "any city or town" within a district created under Article XVI, Section 59 of the state constitution may contract with that district for sewage transportation, treatment and disposal services.[41] "Any city or town" may also contract with such districts to acquire, for its own benefit, one or more sanitary sewer systems.[42]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Municipal utility districts have authority to accept grants

and loans in any form and from any source approved by the board of directors of the district, including the United States.[43] Water Control and Improvement Districts have the authority to solicit funds from the United States and any other source.[44] There are no significant limitations on the utilization of grants by the districts for waste management treatment purposes.

The authority for regional or areawide districts and municipalities to accept and utilize grants from any source must be inferred, in the absence of express statutory authorization, from the general operating authority of these agencies.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Municipal utility districts have authority to enforce all necessary charges in addition to taxes to provide any district facilities or services.[45] This charging authority does not expressly provide for a consideration of the volume, nature or delivery flow rate of the effluent, but such a basis may be inferred from the term "all necessary charges." The district may also raise revenue by imposing a maintenance tax for "planning, maintaining, repairing and operating all necessary plants, . . . facilities, . . . [and] improvements of the district."[46] Water Control and Improvement Districts also have the power to adopt "specific charges, fees or rentals in addition to taxes,"[47] but these districts are not explicitly authorized to adopt the above charge bases. The tax authority includes the power to levy and collect maintenance taxes.[48]

The Water Quality Board also has rate making authority over those regional or areawide systems it has designated; after a public hearing the Board "may set reasonable rates for the furnishing of waste" treatment services to any person.[49] The adoption of appropriate charge bases may be inferred from this power to set reasonable rates.

Home rule cities have the general power "to demand and receive compensation for" services furnished.[50] Encumbered systems of any city or town are to establish rates for services sufficient to pay all operating maintenance and bond redemption expenses.[51] City owned plants operating under general law have the power to "regulate by ordinance, the rates and compensation to be charged the public."[52] The bases for these rates are not set out by statute; therefore, the inference is that the municipalities have the implied authority required by paragraph 2.3.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

What authority there is to charge each category of user for its proportionate share of the costs of services must be inferred from the charging authority in paragraph 2.3. Additionally there are several state court decisions supporting this inference. Most significantly a municipal corporation operating a public utility has the right to classify consumers under reasonable classifications based on any matter which presents a substantial difference as a ground of distinction.[53]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the waste treatment agencies have been given authority to recover capital costs from industry; however, none of the agencies are subject to legislation that would prevent them from doing so. Consequently this authority can only be inferred from the general authority of the agencies to charge for waste services.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

Municipal utility districts have general authority to borrow money for any corporate purpose on short- and long-term bases.[54] Water Control and Improvement Districts under Article XVI, Section 59 of the state constitution have long-term debt capacities. Regional or area-wide disposal systems also have long-term[55] and interim[56] debt authority.

All cities and towns including home rule cities have the authority to encumber their sewer systems and to evidence their obligations by the issuance of bonds.[57]

2.4.1 General Obligation Funding.

General obligation bonds may be issued by municipal utility districts for all legitimate needs of a sanitary sewer system.[58] These bonds may be issued in series, and they may mature serially up to 40 years at any legal rate of interest determined by the board of directors.[59] Prior to issuance,

the Texas Water Rights Commission must approve the proposed project along with the "operation and feasibility of all districts that issue bonds."[60]

Water Control and Improvement Districts organized under Article XVI, Section 59 of the state constitution are authorized to incur any debt "which is necessary to provide improvements . . . to achieve the purposes for which the district was created."[61] Approval of these need only be by a majority vote.[62] However, the board of directors of these districts may limit this authority by a resolution declaring "that during a period of not more than 15 years, the district will not issue bonds in an amount of more than 25 per cent of the assessed value of taxable real property in the district."[63] The Texas Water Rights Commission must also approve these projects and the organization and feasibility of districts issuing bonds.[64]

The long-term debt of all cities and towns when issued to build, purchase or mortgage their sewer system do not represent debts of the city or town but only charges on the property of the system so encumbered.[65]

2.4.2 Special Funds and Revenue Funding.

Municipal utility districts, without an election, may issue revenue bonds to mature over not more than 20 years and to bear an interest rate of not more than 10%.[66] These districts may also issue refunding bonds, without the approval of the Texas Water Rights Commission,[67] in order to refund any of its outstanding bonds may or may not mature serially over a period of 40 years at any legal rate of interest approved by the district's board of directors.[68]

Water Control and Improvement Districts may issue revenue bonds under terms and conditions thought desirable by its board of directors.[69] These districts may also issue refunding bonds to refund any bonds issued by it.[70]

All cities and towns, including home rule cities may issue revenue bonds.[71] As to the refunding of tax bond indebtedness, general law cities may refund such bonds when in the aggregate they are not less than 30 per cent of the assessed valuation of the property in such city. The bonds may be issued without an election but the interest rate is limited to not more than the average rate of bonds so refunded, and the principal may not exceed the combined amount of the bonds so refunded. The refunding bonds will have a maturity

as set by the governing body of the city or town.[72] All cities including home rule cities may refund revenue bonds with revenue bonds at an interest rate not to exceed 6% and at a maturity not to exceed 40 years.[73]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

For users within a municipal utility district this authority must be inferred from its general charging power. However, for areas served outside the district, the district is required to establish rates sufficient to meet the expenses of operating and maintaining a sewer system serving those outside areas and to pay the indebtedness associated with that segment of the system.[74] Cities contracting with an Article XVI, Section 59 district for sewer service are in turn required to establish rates sufficient inter alia to pay the city's obligations under that contract.[75]

Water Control and Improvement Districts are allowed not only to establish reasonable rates and charges,[76] but also to levy and collect taxes to pay for the construction, operation and maintenance of the district on a benefit basis; i.e. based on the amount and value of benefits accruing to property in the district.[77] This taxing power is only to supplement the charging authority of the district.[78]

Special and general law cities would also appear to have this authority when serving areas outside the boundaries of the city or town. The contracts for such service are to be on "such terms and conditions as may appear to be for the best interest of such town or city."[79]

Thus, through their general powers to charge, to tax and to contract, these management agencies can assure compliance with this requirement of the Act.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

This authority is lacking for all agencies except Municipal Utility Districts. These districts may discontinue service to prevent abuses or to enforce the payment of charges that have remained unpaid for at least six months.[80] This,

however, is not broad enough to come within the requirements of this paragraph.

There is a cut-off authority in the Water Quality Board permit program, since all unauthorized discharges are prohibited.[81] The revocation of a permit for failure to comply with the conditions of the permit may prove to be an effective sanction. Although the conditions of a permit may include compliance with an areawide plan, the cut-off sanction involved is exercised independently and not in conjunction with the various waste treatment agencies.[82]

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

This authority is also lacking among the various waste treatment agencies, and only through the operation of the permit program by the Water Quality Board can this authority be effectively implemented.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Municipal Utility Districts may adopt reasonable rules and regulations for the breach of which a penalty may be assessed in an amount not to exceed $200 or imprisonment for 30 days or both.[83] However, on its face the statute authorizing this rule making authority would not seem to be broad enough to encompass all facets of an areawide plan.[84] The same authority with the same limitations is found in the Water Control and Improvement Districts.[85]

The cities, towns and municipal corporations are likewise without authority of the scope required by this paragraph.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Municipal Utility Districts are specifically authorized to collect, treat and dispose of all domestic, industrial and communal wastes;[86] however, all other waste treatment agencies must rely on their overall authority to accept sewage in order to claim this authority. With such skeletal authority, there is no authorization for these agencies to

set criteria for the acceptance of such wastes to safeguard their treatment facilities. This power to control the quantity, character and quality of industrial waste charges is independently lodged in the Water Quality Board permit program.[87]

3.0 SUMMARY

The Texas waste treatment agencies are not able to claim full authority to comply with the requirements of this study. Although most requirements have been met expressly or by inference, none of the agencies have been granted power to recover the federally funded portion of capital costs from industry. Furthermore, none of the agencies have been given the power to deny new or additional "hook-ups" or impose other penalties for non-compliance with an areawide plan. Otherwise these agencies appear to comply with the requirements of the Act included in this study.

3.1 Deficiencies

All of the agencies should be given explicit authority to charge for sewer services on the basis of the volume, composition and delivery flow rate of the sewage. The agencies, except for municipal utility districts, do not have explicit authority to receive industrial wastes, nor do they have the power to "cut-off" existing users for non-compliance with an areawide plan.

4.0 BIBLIOGRAPHY

1. Local and Regional Water Pollution Control in Texas. W. Thomas Jacks, 48 Texas L. Review 1286 (1970).

2. Current Problems, Water Pollution Control in Texas, 48 Texas L. Review 1029 (1970).

FOOTNOTES

1. V.T.C.A., Water Code §21.257 (1972).
2. V.T.C.A., Water Code §21.062 (1972).
3. V.T.C.A., Water Code §21.088(d) (1972).
4. V.T.C.A., Water Code §21.075 (1972).
5. V.T.C.A., Water Code §21.061 (1972).
6. V.T.C.A., Water Code §§21.079 to 21.082 (1972).
7. V.T.C.A., Water Code §21.251 (1972).
8. V.T.C.A., Water Code §21.092 (1972).

9. V.T.C.A., Water Code §21.086 (1972).
10. V.T.C.A., Water Code §21.066 (1972).
11. V.T.C.A., Water Code §21.201 (1972).
12. V.T.C.A., Water Code §21.204 (1972).
13. V.T.C.A., Water Code §25.101 (1972).
14. V.T.C.A., Water Code §25.106 (1972).
15. V.T.C.A., Water Code §25.104 (1972).
16. V.T.C.A., Water Code §11.101 (1972).
17. V.T.C.A., Water Code, Title 3 (1972).
18. V.T.C.A., Water Code §54.011 (1972).
19. V.T.C.A., Water Code §54.014 (1972).
20. V.T.C.A., Water Code §51.121 (1972).
21. V.T.C.A., Water Code §51.012 (1972).
22. V.T.C.A., Water Code §51.038 (1972).
23. V.T.C.A., Water Code §51.047 (1972).
24. V.T.C.A., Water Code §51.052 (1972).
25. V.T.C.A., Water Code §51.048 (1972).
26. Vernon's Ann. Civ. St., Title 28, History, Status and Function of the Cities, Towns and Villages, Trueman O'Quinn p. XXVI.
27. V.T.C.A., Water Code §21.095 (1972).
28. V.T.C.A., Water Code §54.201(b) (1972).
29. V.T.C.A., Water Code §54.218(c)(2) (1972).
30. V.T.C.A., Water Code §54.519 (1972).
31. V.T.C.A., Water Code §54.233 (1972).
32. V.T.C.A., Water Code §51.122 (1972).
33. V.T.C.A., Water Code §51.137 (1972).
34. Id.
35. V.T.C.A., Water Code §25.021 (1972).
36. V.T.C.A., Water Code §25.022 (1972).
37. V.T.C.A., Water Code §25.023 (1972).
38. V.T.C.A., Water Code §25.025 (1972).
39. Vernon's Ann. Civ. St. art. 1175(13), (29) (1963).
40. Vernon's Ann. Civ. St. art. 1108(2), (3) (1963).
41. Vernon's Ann. Civ. St. art. 1109i-1 (1963).
42. Vernon's Ann. Civ. St. art. 1109 (Supp. 1972).
43. V.T.C.A., Water Code §54.232 (1972).
44. V.T.C.A., Water Code §51.166 (1972).
45. V.T.C.A., Water Code §54.204(a) (1972).
46. V.T.C.A., Water Code §54.311(a) (1972).
47. V.T.C.A., Water Code §51.338(a) (1972).
48. V.T.C.A., Water Code §51.360 (1972).
49. V.T.C.A., Water Code §21.205 (1972).
50. Vernon's Ann. Civ. St. art. 1175(13) (1963).
51. Vernon's Ann. Civ. St. art. 1113 (1963).
52. Vernon's Ann. Civ. St. art. 1123 (1963).

53. Gillam v. City of Fort Worth, 287 S.W. 2d 494 (Civ. App. 1956).
54. V.T.C.A., Water Code §54.302 (1972).
55. V.T.C.A., Water Code §25.051 (1972).
56. V.T.C.A., Water Code §25.055 (1972).
57. Vernon's Ann. Civ. St. art. 1111 (1963).
58. V.T.C.A., Water Code §54.501 (1972).
59. V.T.C.A., Water Code §54.502 (1972).
60. V.T.C.A., Water Code §54.516 (1972).
61. V.T.C.A., Water Code §51.402 (1972).
62. V.T.C.A., Water Code §51.414(b) (1972).
63. V.T.C.A., Water Code §51.439(b) (1972).
64. V.T.C.A., Water Code §51.421 (1972).
65. Vernon's Ann. Civ. St. art. 1111 (1963).
66. V.T.C.A., Water Code §54.303(a) (1972).
67. V.T.C.A., Water Code §54.516 (1972).
68. V.T.C.A., Water Code §54.514 (1972).
69. V.T.C.A., Water Code §51.455 (1972).
70. V.T.C.A., Water Code §51.455 (1972).
71. Vernon's Ann. Civ. St. art. 1111 (1963).
72. Vernon's Ann. Civ. St. art. 1118n-3 (1963).
73. Vernon's Ann. Civ. St. art. 1118n-10 (1963).
74. V.T.C.A., Water Code §54.519(e) (1972).
75. Vernon's Ann. Civ. St. art. 1109i-1 (1963).
76. V.T.C.A., Water Code §51.338 (1972).
77. V.T.C.A., Water Code §§51.631 et seq. (1972).
78. V.T.C.A., Water Code §51.508 (1972).
79. Vernon's Ann. Civ. St. art. 1108 (1963).
80. V.T.C.A., Water Code §54.204(c) (1972).
81. V.T.C.A., Water Code §21.251 (1972).
82. V.T.C.A., Water Code §21.081 (1972).
83. V.T.C.A., Water Code §54.209 (1972).
84. V.T.C.A., Water Code §54.205 (1972).
85. V.T.C.A., Water Code §§51.127 and 51.131 (1972).
86. V.T.C.A., Water Code §54.201(2) (1972).
87. V.T.C.A., Water Code §21.081(3), (4) (1972).

REGION VII

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

IOWA REPORT
(1973)

1.0 OVERVIEW

1.1 Description of Existing Agencies

The Iowa legislature has recently enacted a new and very comprehensive state-wide water pollution control program. The central authority is the department of environmental quality[1] and it has the duty to prevent, abate and control water pollution.[2] The chief administrative officer of the department is known as the executive director of environmental quality and is appointed by the governor with the approval of the senate.[3]

The department is subdivided into commissions according to areas of responsibility. The current divisions consist of the air quality commission, the water quality commission, the chemical technology commission and the solid waste disposal commission.[4] The water quality commission's membership consists of the chairman of the Iowa development commission or his designee and the following four members who are appointed by the governor with the consent of the Senate:

1) a member actively engaged in diversified farming,

2) a member actively engaged in the management of a privately owned manufacturing company, and

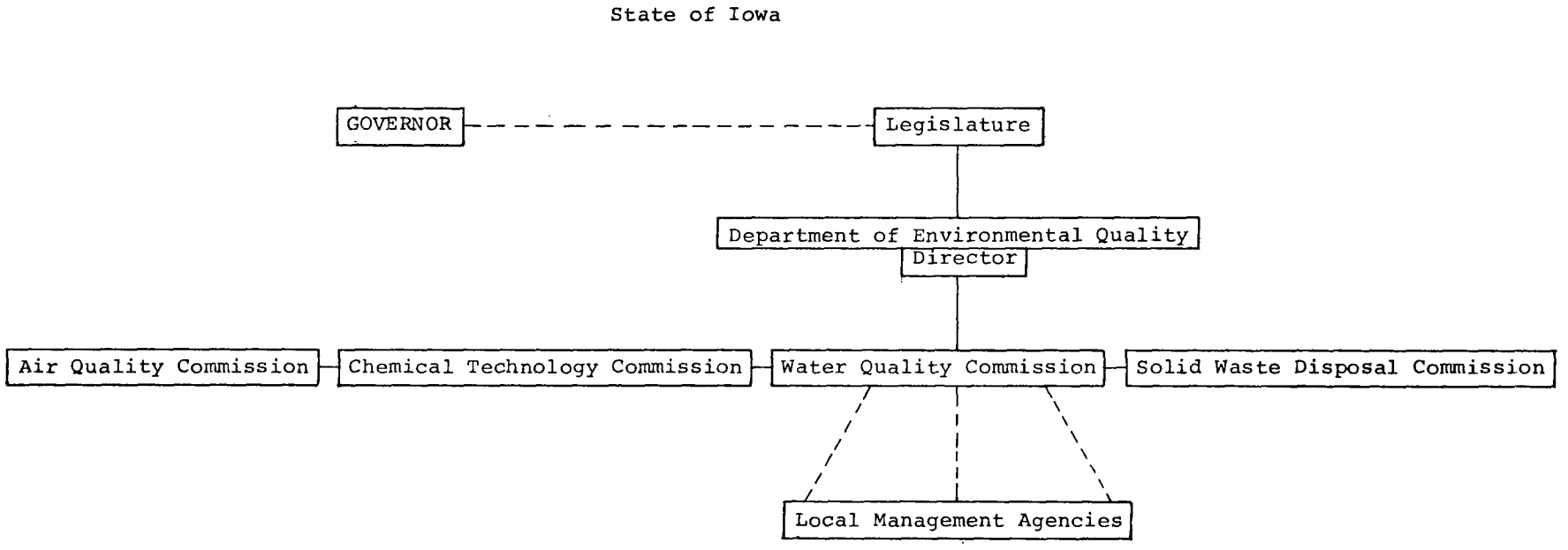
3) two members who are electors of the state.[5]

The water quality commission is the administrative arm of the department which actually carries out the water pollution control functions for the state and, as such, is charged with developing comprehensive plans and programs for the prevention, control and abatement of water pollution.[6] The commission is also responsible for the establishment of quality standards and effluent standards pertaining to the waters of the state.[7]

Actual control of pollution is carried out via a permit system and it is unlawful to construct or modify any sewage disposal sy tem or to construct or use any new outlet for the discharge of ny sewage, industrial wastes or other wastes into the waters of the state without first securing a written permit from the department.[8] The commission is responsible for establishing the rules and conditions under which the executive director shall issue, revoke, modify or deny such permits.[9]

Management of sewage treatment agencies is carried out at the local level by cities, towns, counties and sanitary districts.[10] Sanitary districts may be formed whenever any area of contiguous territory is so situated that the construction, maintenance and operation of a trunk sewer system and of a plant or plants for the treatment of sewage and the maintenance of one or more outlets for the drainage thereof, after having been so treated by and through such plant or plants, will be conducive to the public health, comfort, convenience or welfare.[11] In addition, any two or more cities or towns may jointly manage treatment facilities if such cities or towns deem it to be to their mutual advantage.[12]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Cities, towns, counties and sanitary districts are authorized and empowered to own, acquire, establish, construct, purchase, equip, improve, extend, operate, maintain, reconstruct and repair within or without the corporate limits of such city, town, county or sanitary district, works and facilities useful and convenient for the collection, treatment, purification and disposal in a sanitary manner of the liquid and solid waste, sewage, and industrial waste of any such city, town, county or sanitary district.[13]

Likewise, the governing bodies of two or more cities or towns may determine to make joint use of all or any part of the sanitary sewer system of any or all of such cities or towns or to construct a sanitary sewer system to be used jointly by said cities or towns.[14]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

There is no specific statutory authorization concerning acceptance of funds or grants although the legislature has recognized such power exists in that local agencies must obtain approval of the commission before applying for federal assistance for pollution abatement.[15]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All management agencies possess express statutory authoriz tion sufficient to assure compliance with this provision.[16]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

All agencies possess the general power to establish and maintain just and equitable rates and charges for the use of and

the service rendered by such works.[17] Such charges are to be sufficient to pay the expenses of operation, maintenance and repair[18] of the system. From this one may assume that each category of user will pay its proportionate share.

Cities and towns also have the express statutory duty to assess equitable charges in proportion to the service rendered and are required "to take into consideration in the case of each such premises served, the quantity of sewage therein or thereby produced and its concentration, strength, or river pollution qualities in general."[19]

Likewise, the rates established by the board of trustees of sewage districts are to be "equitable and in proportion to the services rendered and the cost thereof and are to take into consideration in the case of each such premises the quantity of sewage produced thereby and its concentration, strength, and pollution qualities."[20]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no express statutory authorization providing for this for any of the agencies discussed herein although one could assume that compliance could be exacted through the general powers of contract possessed by each agency.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

All management agencies are provided with the express statutory authority needed to assure compliance with this provision. These powers will be discussed in more detail infra.

2.4.1 General Obligation Funding.

With the exception of counties all management agencies have the express authority to issue general obligation bonds for the purpose of constructing, extending or improving sewage treatment facilities.[21] Such bonds must mature within twenty years of their issuance[22] and may bear a rate of interest not exceeding seven percent (7%) per annum.[23] In cities and

towns such bonds may not create an indebtedness of more than five percent of the actual value of the taxable property of said city or town.[24] In sanitary districts such bonds may not become an indebtedness of the district in excess of five percent of the value of the taxable property within such district.[25]

2.4.2 Special Funds and Revenue Funding.

All management agencies are vested with the express statutory authority to finance sewage treatment facilities and projects via issuance of revenue bonds.[26] All the details pertaining to the issuance of such bonds and the terms and conditions thereof, shall be determined by resolution or ordinance of the municipality or sanitary district,[27] with the only statutory limitation being that the rate of interest on such bonds may not exceed seven percent per annum.[28]

2.4.3 Other Methods of Financing.

Sanitary districts may also finance projects via issuance of special assessments against benefited property.[29]

All management agencies may refund previously issued bonds as they mature if necessary.[30]

All types of agencies are statutorily authorized to borrow money from the federal government or an agency thereof for these purposes.[31]

There has also been established a state fund known as the "sewage works construction fund" which is administered by the department.[32] Such funds are used to help local agencies finance treatment projects and facilities[33] and are administered on a priority basis as established and determined by the water quality commission.[34]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

All management agencies would be able to assure compliance with the requirements of this provision through their charging powers[35] and their general powers of contract. In addition, when facilities are jointly used or owned by two or more cities or towns there is specific statutory authorization to settle

the annual charge to be paid by each via contract.[36] One may assume that this would result in each paying its proportionate share of treatment costs.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan under §202 Applicable to Such Area. [§208(c)(2)(H)].

Other than through their general powers of contract and rule making powers local management agencies lack express statutory authority in this respect.

The department does exert sufficient control to assure compliance with this provision if one assumes that it would withhold or revoke the necessary permit because of non-compliance with such plans.[37]

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

The analysis of this situation would be very similar to that discussed in Section 2.6, supra, with the main difference being that this would almost surely be within the contractual powers of the local agencies.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Failure to comply with the permit provisions or with any order issued by the department with reference to matters pertaining to the pollution of water of the state is illegal and may result in being fined therefore.[38]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

All management agencies possess both general[39] and specific[40] statutory authorization to treat industrial wastes.

3.0 SUMMARY

Iowa is extraordinarily well endowed with legislation concerning water pollution control. Its legislation relating to both water pollution control and sewage treatment facilities

is better written, better organized and more succinct than that pertaining to most other states. As a result, it is faced with but a few deficiencies relating to compliance with the requirements of the Act and with a little help from the legislature it should have no trouble meeting federal standards.

3.1 Deficiencies

Since the local agencies lack express authority to accept and utilize grants, or other funds from any source for waste treatment management purposes it would be helpful if legislation were passed to expressly grant such authority.

Since the federal act requires that full recovery will be had from the industrial users of the waste treatment works of the federal portion of the construction costs of treatment works reasonably attributable to treatment of such industrial wastes legislation should be forthcoming which would require this rather than placing total responsibility for securing such compliance on local agencies through their powers of contract.

Even though the department would be able to assure compliance with the requirements of Section 2.6 through its power to revoke permits the local agencies lack any such express power. Since the Act seems to envision such a harsh sanction for noncompliance it would be most appropriate if the legislature would grant sufficient express statutory authorization to local agencies to assure that they have the power to exact the compliance required.

Counties lack the authority to issue general obligation bonds for financing construction of treatment works and, as such, need legislative authorization to do so.

4.0 BIBLIOGRAPHY

1. Comment, Contracts of Political Subdivision in Iowa -- Procedure, Defects, Recovery, 10 Drake L. Rev. 53(1960).

2. Hayes, Special Assessments for Public Improvements -- Pre-Assessment Procedure, 12 Drake L. Rev. 1(1962).

3. Hayes, Special Assessments for Public Improvements in Iowa -- Part III: Making the Assessment, 14 Drake L. Rev. 3(1964).

4. Hayes, Special Assessments for Public Improvements in Iowa -- Utility Connections, 13 Drake L. Rev. 25(1963).

5. Hines and Schantz, Improving Water Quality Regulation in Iowa, 57 Iowa L. Rev. 231(1971).

6. Water Quality Control, 56 Iowa L. Rev. 806(1971).

7. Woodroof, Pollution Control: Why Not Cost Allocation?, 21 Drake L. Rev. 133(1971).

8. Yeager, City and Town Boundaries, 19 Drake L. Rev. 1(1969).

FOOTNOTES

1. Iowa Code Annotated, §455 B.1 et seq.
2. Iowa Code Ann. §455 B.31.
3. Iowa Code Ann. §455 B.2.
4. Iowa Code Ann. §455 B.4.
5. Iowa Code Ann. §455 B.4(2).
6. Iowa Code Ann. §455 B.32(1).
7. Iowa Code Ann. §§455 B.32(2), 455 B.35.
8. Iowa Code Ann. §455 B.45.
9. Iowa Code Ann. §455 B.32(3).
10. Iowa Code Ann. §394.1. See also, cities and towns, §§391.11, 391-12, 391.1(1), 391 A.2; sanitary districts, §§358.1 et seq., 358.12, 358.16.
11. Iowa Code Ann. §358.1.
12. Iowa Code Ann. §392.1 et seq.
13. Iowa Code Ann. §394.1. See also, note 10, supra.
14. Iowa Code Ann. §392.1 et seq.
15. Iowa Code Ann. §455 B.70(3)(d). See also §394.1 which grants local agencies the authority to:

    > acquire by gift, grant, purchase, or condemnation, or otherwise, all necessary lands, rights of way, and property therefore, within or without the said city, town, county or sanitary district, to purchase and acquire an interest in such sanitary disposal project or such works and facilities which are owned by another city, town, county or sanitary district and which are to be jointly used by them.

16. Iowa Code Ann. §394.9. See also, cities and towns, §§393.1, 393.2, 393.4; sanitary districts, §358.20; joint

projects by two or more municipalities, §§392.11(3), 393.1, 393.2, 393.4.

17. Iowa Code Ann. §349.9.
18. Id.
19. Iowa Code Ann. §393.2.
20. Iowa Code Ann. §358.20.
21. Cities and towns, §§391 A.35, 396.22; sanitary districts, §358.2 (which incorporates the provisions of §§391.35, 396.22), jointly owned facilities, §392.11.
22. Id.
23. Id.
24. Iowa Code Ann. §§391 A.35, 396.22.
25. Iowa Code Ann. §§358.2, 391.35, 396.22.
26. Iowa Code Ann. §§394.1, 394.6. See also, 358.21, 392.11.
27. Iowa Code Ann. §394.6.
28. Iowa Code Ann. §394.13.
29. Iowa Code Ann. §358.22.
30. Iowa Code Ann. §394.12.
31. Iowa Code Ann. §394.6.
32. Iowa Code Ann. §455 B.67.
33. Iowa Code Ann. §455 B.68.
34. Iowa Code Ann. §§455 B.69, 455 B.70.
35. See notes 16-20, supra.
36. Iowa Code Ann. §392.1.
37. I.e., see notes 8 and 9 supra, and the accompanying text.
38. Iowa Code Ann. §§455 B.44, 455 B.45.
39. Iowa Code Ann. §394.1.
40. Cities and towns, §§393.1, 393.10, 393.14; sanitary districts, §358.16.

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BEFORE READING THIS REPORT

KANSAS REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Kansas is among the states which continue to use the more traditional approach of administering water pollution control programs through a state board of health. It has both a state board of health and a state department of health which are jointly responsible for enforcement of Kansas' pollution control laws.[1] The board is vested with both the authority to promulgate rules and regulations as may in its judgment be necessary to protect the waters of the state from pollution by oil, gas, salt water injection wells or underground storage reservoirs and to establish water quality standards for the waters of the state to protect their beneficial uses.[2] The board also has the authority to control the "disposal, discharge or escape of sewage by or from municipalities, corporations, companies, institutions, state agencies, federal agencies, or individuals and any plants, works, or facilities owned and/or operated by them."[3] This latter function is carried out via a permit application and issuance authority[4] and failure to comply with this requirement may result in the assessment of a criminal penalty of $1000 per day for each day the offence is maintained.[5] All orders of the board are final unless appealed within thirty (30) days after the order has been made.[6] An appeal may be taken from any final order or final determination of the board by any person adversely affected, to the district court of the county of residence of the appellant.[7]

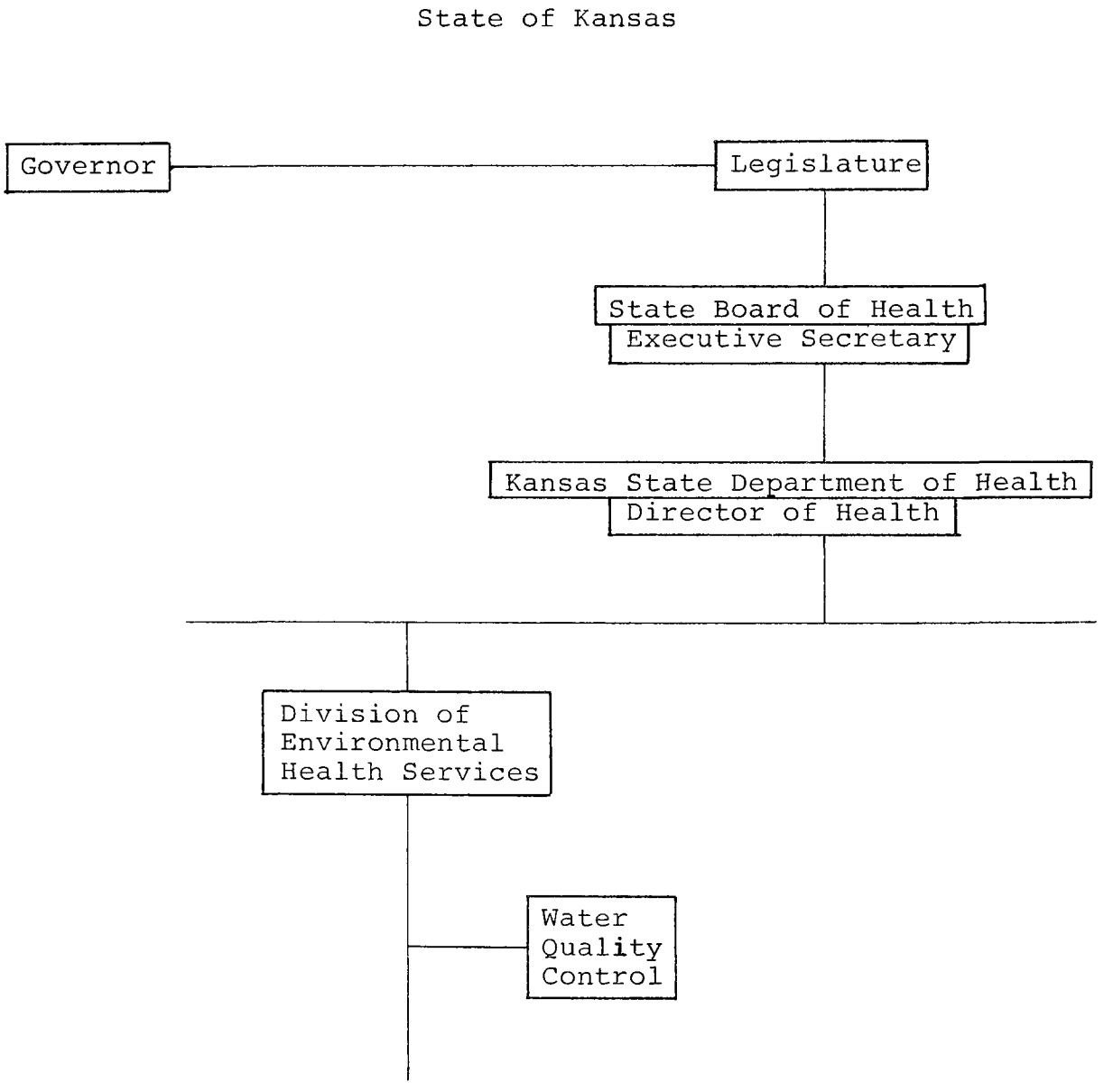
In accordance with its rule making functions the board is also authorized to establish minimum standards for sanitary water and sewage systems and to suggest legislation which may be required to adequately protect water supplies from pollution.[8]

Local health departments also play a role in that they are responsible for administering the "sanitary codes"[9] which are promulgated by the county commissioners of each county in the state.[10] Such "codes" must be submitted to the state board of health for approval[11] and upon approval they become law-complete with criminal sanctions for violation thereof.[12]

The state department of health is also responsible for administering the state water pollution control account.[13] It is the agency responsible for determining priorities among projects[14] and in finally administering grants in aid to municipalities.[15]

Management of sewage treatment facilities is carried out at the local level and may be performed by any city, county, township, township sewer districts and improvement districts.[16] In addition to these general powers[17] the various local agencies possess other vestiges of authority via special statutory authorizations.[18] The exercise of these powers requires the approval of both the local agency and the state board of health.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority, Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by any Area-Wide Plan. [§208(c)(2)(C)].

All of the enumerated local management agencies are vested with "all the powers necessary or convenient to plan, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, and maintain" sewage systems and all appurtenances necessary in the maintenance and operation of the same.[19]

2.2 Authority to Accept and Utilize grants, or other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All of the agencies have the express statutory authority to "borrow money and to apply for and accept advances, loans, grants, contributions or any other form of financial assistance from the federal government, the state, county or other public body" for the purposes of water pollution control and sewage treatment facilities.[20]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

The various agencies all have express statutory authority to adopt sewer service charges by ordinance or resolution.[21]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

Agencies may base sewer service charges on a per unit volume of water used[22] and/or upon the strength and volume of sewage contributed by each user.[23] The proceeds of such sewer service improve, construct, reconstruct, develop and redevelop sewer systems.[24]

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the agencies are vested with the express statutory authority to do this. However, they do possess the power to

adopt rules and regulations providing for the management and operation of their system.[25] This, combined with their general powers of contract[26] could possibly be used to comply with this provision of the act. Additionally, such agencies "may include in any contract for financial assistance with the federal government such conditions imposed pursuant to federal law as the [agency] may deem reasonable and appropriate."[27]

2.4 Authority to Incur Short- and Long-term Indebtedness [§208 (c)(2)(F)].

All management agencies have express statutory authority to finance such projects via bonded indebtedness and this will be more specifically discussed infra.

2.4.1 General Obligation Funding

The general water pollution act contains no express authority relating to issuance of general obligation bonds and is therefore deficient in this respect. However, certain of the special acts relating to individual management agencies do authorize issuance of "improvement bonds" payable from assessments against the benefited property.[28] Such bonds are subject to a twenty-one (21) year maturity limitation[29] and may bear an interest rate not to exceed seven percent (7%).[30]

2.4.2 Special Funds and Revenue Funding

All management agencies have express statutory authority to issue revenue bonds to finance construction of sewer systems.[31] The maturation date of such bonds may be established by the issuing agency[32] and may bear interest up to eight percent (8%).[33] The issuance of such bonds are subject to approval by a majority vote of the electors affected thereby.[34]

2.4.3 Other Methods of Financing

Kansas has a state water pollution control account from which local agencies may receive aid. This account is expended according to a system of priorities and is administered by the state board of health.[35]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

There is no express authority mandating compliance with this provision but agencies could certainly comply through the exercise of their powers of contract relating to construction and development as well as receipt and treatment of sewage.[36] Also, they may

include in any contract for financial assistance with the federal government such conditions imposed pursuant to federal law as the agency may deem reasonable and appropriate.[37]

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

The governing body of each agency has the statutory power to adopt by ordinance or resolution, rules and regulations providing for the "management and operation of its sewer system, prohibiting the discharge of matter deleterious to the proper operation of the treatment plant into the sewer system," and can "establish the types and characteristics of sewage that may be discharged into the sewer system."[38] Thus, it may be that individual users who submit improper sewage substances in violation of rules or regulations for treatment could be cut-off but it is doubtful that such powers could be expanded to assure compliance with the drastic measures envisioned and required by this provision of the act.

2.6.1 Authority to Deny New or Additional Hook-ups (Moratorium Effect).

Local agencies could most likely comply with this provision through either their general power to contract or their power to adopt rules and regulations.

One certain manner of assuring compliance is the permit function that is carried out by both the state board of health[39] and local health departments.[40]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

The only other sanctions available to local management agencies relates to the failure to pay treatment service charges. In the event any person, firm, corporation, political unit or organization living or operating on premises connected to a sanitary sewer fails, neglects or refuses to pay the service charges when due, the governing body is authorized to refuse the delivery of water from a publicly owned waterworks until such time as such charges are fully paid.[41]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Management agencies possess the authority to contract with agencies of the federal government, public bodies of the state of Kansas or other states or with any private person or body for receiving and treating sewage.[42]

3.0 SUMMARY

For the most part management agencies in Kansas would be able to comply with the requirements of the act. The water pollution act is basically well suited to the task of assuring compliance although it would be better if the resolution adopting requirement (by the local governing body and the state board of health)[43] were repealed as this does not seem to serve any useful purpose and at worst would hinder compliance.

It would also be appropriate to repeal all of the various statutes relating to individual management agencies[44] as they are not useful in the development of area-wide planning and construction and are capable of injecting much conflict and confusion into the development of Kansas law which is needed in this era of regionalized pollution control planning and development.

3.1 Deficiencies

Kansas law does not expressly provide for recovery from industrial users as is required by the act relating to section 2.3.2 supra and legislation would be helpful to remedy this situation.

The water pollution act does not provide the authority to issue general obligation bonds and should be amended to provide therefor.

Kansas, like most states, does not grant local agencies the specific authority needed to comply with the requirements of section 2.6 and since the act envisions such a drastic sanction legislation should be forthcoming to so provide.

4.0 BIBLIOGRAPHY

1. Coggins, George Cameron. Regulation of air and water quality Kansas: a critical look at legislative ambiguity and administrative discretion. 21 U.Kans. 1 (1973).

2. Collister, Hayes, and Sampson, Legal Muscle for the Fight Against Pollution, 9 Washburn L. J. 342 (1970).

3. Rausch, Municipal Borrowing in Kansas, 10 Kan. L. Rev. 515 (1962).

4. Kansas Water Resources Board, A Study of Water Quality Control Needs (1967).

FOOTNOTES

1. Kansas Statutes Annotated, §65-165.
2. Kansas Stat. Ann. §65-171d.
3. Id.
4. Kansas Stat. Ann. §§65-165, 65-166.

5. Kansas Stat. Ann. §65-167.
6. Kansas Stat. Ann. §65-171d.
7. Id.
8. Kansas Stat. Ann. §65-171h.
9. Kansas Stat. Ann. §§19-3701, 19-3703.
10. Kansas Stat. Ann. §19-3702.
11. Kansas Stat. Ann. §19-3704.
12. Kansas Stat. Ann. §19-3707.
13. Kansas Stat. Ann. §65-3301 et seq.
14. Kansas Stat. Ann. §65-3304.
15. Kansas Stat. Ann. §65-3303.
16. Kansas Stat. Ann. §§12-3104, 12-3103, 12-3102(b).
17. Id.
18. See inter alia, first class cities, ch. 13, K.S.A.; second class cities, ch. 14, K.S.A.; third class cities, ch. 15, K.S.A.; counties, §19-2704 et seq.; various special types of township sewer districts, §§19-2731 et seq., 19-2787 et seq., 19-27, 114 et seq.; and improvement districts, §19-2765 et seq.
19. Kansas Stat. Ann. §§12-3104, 12-3102(a)(b).
20. Kansas Stat. Ann. §12-3104(h).
21. Kansas Stat. Ann. §12-3104(a).
22. Id.
23. Id.
24. Kansas Stat. Ann. §12-3104(b).
25. Kansas Stat. Ann. §12-3105.
26. Kansas Stat. Ann. §12-3104(f).
27. Kansas Stat. Ann. §12-3104(h).
28. E.g., improvement districts, §§19-2767, 19-2777 (note 30 year maturity limit); counties, §§19-2705, 19-2712; township sewage districts, §§19-2731, 19-2792, 19-27, 120.
29. Kansas Stat. Ann. §10-103.
30. Kansas Stat. Ann. §10-1009(a).
31. Kansas Stat. Ann. §12-3104(c).
32. Kansas Stat. Ann. §12-3106.
33. Kansas Stat. Ann. §10-1009(b).
34. Kansas Stat. Ann. §12-3106.
35. Kansas Stat. Ann. §65-3301 et seq.
36. Kansas Stat. Ann. §12-3104(e)(f).
37. Kansas Stat. Ann. §12-3104(h).
38. Kansas Stat. Ann. §12-3105.
39. See note 4, supra.
40. See notes 9, 10, 11, supra and the accompanying text.
41. Kansas Stat. Ann. §12-3105.
42. Kansas Stat. Ann. §12-3104, 12-3105.
43. Kansas Stat. Ann. §12-3103.
44. See note 18, supra.

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BEFORE READING THIS REPORT.

MISSOURI REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

In 1972 the Missouri legislature revamped the states water pollution control laws via passage of the "Missouri Clean Water Law."[1] The act created a water contaminant control agency known as the "Clean Water Commission of the State of Missouri,"[2] whose "domicile for the purposes of the act is deemed to be that of the division of health of the department of public health and welfare."[3] The commission consists of six members, gubernatorially appointed, with the advice and consent of the senate.[4] The commission is directed to appoint an executive secretary who shall act as its administrative agent and he is required to be qualified, by education, training and experience, in technical matters in water contaminant control.[5]

The commission is the state-wide agency in charge of enforcing the state's water pollution control laws.[6] It is charged with planning functions which lead to the development of comprehensive programs pertaining to prevention and control of pollution of the waters of the state.[7] In carrying out its duties, the commission is charged with prescribing water quality standards for the different waters of the state[8] and to adopt rules and regulations relating to the prevention of water pollution.[9]

The commission is also charged with adopting reasonable effluent control regulations which require the use of effective treatment facilities, or other methods or prevent water contamination, for each and every significant source, potential source and classification of sources of water contaminants throughout the entire state.[10]

Actual control of water pollution throughout the state is accomplished via a permit-issuance system. It is unlawful for any person to build, erect, alter, replace, operate, use, or maintain any water contaminant source that is subject to standards, rules or regulations of the commission unless he holds a permit from the commission, subject to such exceptions as the commission may prescribe by rule or regulation.[11]

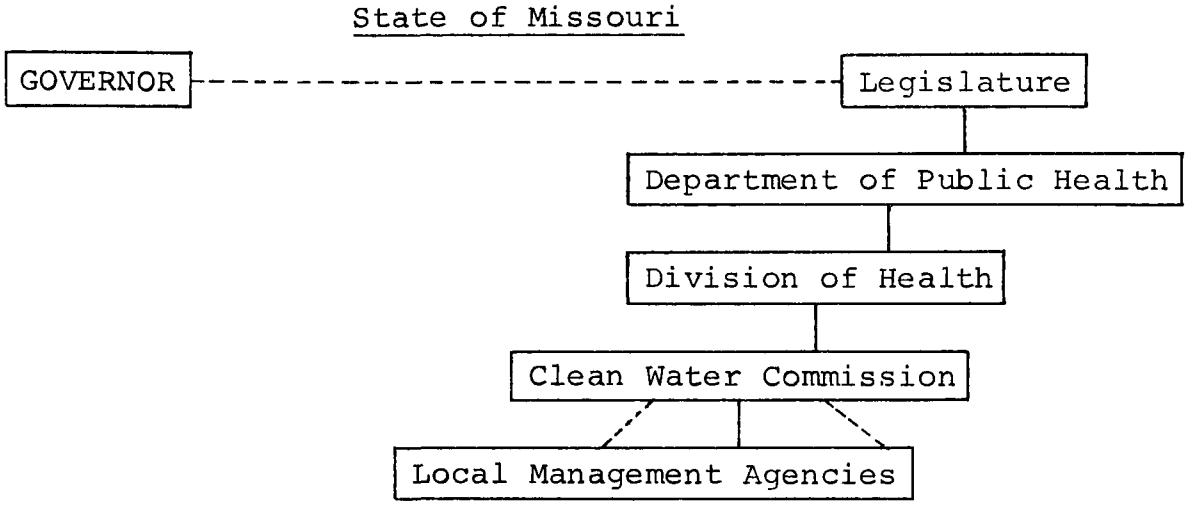
It is unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant source located in Missouri in violation of the Missouri Clean Water Law, or any standard rule or regulation promulgated by the commission and upon proof of violation penalties of up to five thousand ($5,000) per day may be assessed for each day such violation continues to occur.[12]

All final orders and determinations of the commission are subject to judicial review if and only if all administrative remedies are exhausted.[13]

In addition, the legislature has designated the commission as the water pollution agency of the state for all purposes of any federal water pollution control act.[14]

Management of sewage treatment facilities is carried out at the local level and may be conducted by cities, towns, villages and county sewer districts.[15] In addition, there is special statutory authorization regarding the creation of "common sewer districts in certain areas (Jackson County)" which can result in the creation of an additional management agency.[16] Any city, town or village is also authorized to acquire, construct, improve or extend, maintain and operate a combined waterworks and sewerage system. Any such combined waterworks and sewerage system may consist of an existing sewerage system, and existing waterworks, a sewerage system to be acquired or to be constructed or a waterworks to be acquired or constructed or any combination thereof and may include any improvements or extensions to be acquired or constructed either to an existing sewerage system or to an existing waterworks or to both.[17]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

In addition to all powers granted by law and now possessed by cities, towns and villages in Missouri for the protection of the public health, any city, town or village, whether organized under the general law or by special charter or constitutional charter, and any sewer district organized under chapter 249, RSMo, as that chapter now exists, or as it may be amended, is authorized to acquire, construct, improve or extend and to maintain and operate a sewerage system. Such sewerage system may be constructed and operated either within or without the corporate boundaries of any such city, town or village or sewer district.[18] For the purposes of carrying out these powers the term "sewerage system" means and includes any or all of the following:

> (1) Sewerage systems and sewerage treatment plants, with all appurtenances necessary, useful, and convenient for the collection, treatment, purification and disposal in a sanitary manner of the liquid and solid waste, sewage, and domestic and industrial waste of any such municipality; and
>
> (2) Shall include combined storm water and sanitary systems;
>
> (3) The term shall also mean and include the construction of such storm water sewers as, in the judgment of the governing body of any such city, town or village or sewer district, may be necessary or desirable in order to relieve sewers carrying sanitary and storm water loads of undue loads or in order to permit the efficient operation of any such sanitary sewers for the collection, treatment and disposal of sewage and domestic or industrial waste including combined storms and sanitary sewerage system.[19]

Likewise, common sewer districts possess authority to comply with this provision.[20]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All of the management agencies under consideration possess sufficient statutory authority to comply with this provision.[21]

The commission is also authorized to administer federal grants to municipalities and political subdivisions for the planning and construction of sewage treatment works[22] and in doing so has the power to approve projects for which loans or grants under any federal act are made to any municipality of agency in Missouri.[23]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

In common sewer districts the board of trustees "shall impose, charge and collect a reasonable charge from the sewer districts and municipalities based upon the volume of water used by the residential, commercial, and industrial establishments customers within the corporate limits of such district or municipality."[24] The rates must be sufficient to pay operation and maintenance costs, and to service debts and obligations created by revenue bonds.[25] In cities, towns, villages and sewer districts, specific statutory prescriptions relating to sewer charges and rates are all based upon the issuance of revenue bonds. However, they are vested with the general power to do all things necessary or convenient ot prevent or abate the pollution of the waters of the state[26] and it reasonably seems that this would include the authority to assess waste treatment charges based upon the characteristics of the sewage received for treatment.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Common sewer districts have a great degree of flexibility -- via their powers of contract -- relative to what types of sewage they will accept for treatment.[27] They should be able to fully comply with this provision since they are authorized to assess charges upon the basis of the amount of water used by the users of the sewage treatment system, as well as upon criteria such as paying operation and maintenance costs and servicing debts and obligations.[28]

Again, compliance by cities, towns, villages and sewer districts may only be assumed from the general conferral of power that they have relating to the prevention and abatement of water pollution.[29]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the agencies involved have the express statutory authority needed for compliance with this provision. They could, of course, comply via their general powers of contract but such a procedure mandated by statute would be preferable. Cities have a statutory scheme for recovering construction costs attributable to industries but no mention is made concerning recovery of the federal portion of construction costs.[30]

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

All management agencies have sufficient statutory authority in this respect.

2.4.1 General Obligation Funding.

Cities, towns, villages and sewer districts may issue bonds for the purpose payable from taxes to be levied by such city, town, village or sewage district.[31] Issuance of such bonds by sewer districts are subject to voter approval by a two-thirds vote of the electors of such district that vote in an election called for this purpose.[32] Such bonds must be retired within twenty years from the date of issuance.[33] No restrictions are put upon cities, towns and villages in this respect.

Common sewer districts have no authority to issue general obligation bonds.

2.4.2 Special Funds and Revenue Funding.

All of the Missouri agencies have express statutory authorization to issue revenue bonds.[34] In each case such bonds must be authorized by the assent of four-sevenths of the qualified voters of such city, town, village, sewer district or common sewer district who shall vote on such proposition at an election, either general or special.[35] Such bonds may not bear more than six percent interest and shall mature over a period not exceeding thirty-five years.[36]

2.4.3 Other Methods of Financing.

The state may make grants, as funds are available, to local agencies to assist them in the construction of those portions of water pollution control projects which qualify for federal aid and assistance under the provisions of the Federal Water Pollution Control Act, as amended.[37]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

All of the management agencies under consideration have sufficient statutory authority to comply with this provision.[38]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Common sewer districts may enter into agreements with the political subdivisions which use its system regarding the manner of discharge, and types of wastes which may be discharged into the system for treatment. Such political subdivisions are under a duty to comply with the terms of the agreement. If needed, the circuit courts may be used to enforce compliance.[39] Thus, a common sewer district may be able to secure compliance although the statute does not expressly provide for such a "cut-off" power.

There is no provision relating to this for cities, towns, villages or sewer districts, although a 1954 opinion of the attorney general states they may refuse service to users if reasonable charges made therefore are not paid.[40]

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

All management agencies would reasonably possess implied authority in this area through their general powers of contract. However, the statutes involved do not specifically mention this power to deny new connections.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Area-wide Plan.

The only statutory authority existing in regard to this provision concerns the commission's authority to institute civil actions for injunctive relief or for the assessment of penalties as described in paragraph 1.1.[41]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208 (c)(2)(I)].

Cities, towns, villages and sewer districts possess sufficient statutory authorization to comply with this provision.[42] Common sewer districts are authorized to accept the wastes from other political subdivisions for treatment and thus may also treat industrial wastes.[43] Authority to require pretreatment of industrial wastes may reasonably be implied from the power of municipalities to enter into agreements with industries to treat their wastes,[44] and the power of common districts to protect their systems from harmful substances.[45]

3.0 SUMMARY

In most respects the local management agencies in Missouri are vested with the necessary statutory powers needed to assure compliance with the act. However, certain deficiencies -- especially concerning the required charging provisions -- are noted and will be discussed in paragraph 3.1.

3.1 Deficiencies

In common sewer districts sewage treatment rates are established upon the basis of water consumption and operational costs rather than upon the strength, character and volume of sewage treated. Legislation would be needed to provide more express statutory authority in order to assure compliance with the federal act. Cities, towns, villages and sewer districts also lack the express statutory authorization to make charges upon this basis and legislation would be helpful to assure compliance.

Express authority is lacking for all agencies to provide for the recovery of the federal portion of construction costs from industrial users. Common sewer districts need statutory authorization to issue general obligation bonds as they currently lack this power.

Missouri has not provided its local management agencies with the express statutory powers needed to comply with the requirements of Section 2.6. Since the federal act envisions such sanctions, specific legislation would be required to assure compliance.

4.0 BIBLIOGRAPHY

Department of Business and Administration Water Resources Board (Publication WRB2), Missouri Water Plan: State Laws Policy and Programs Pertaining to Water and Related Land Resources, 20-27 (1969).

FOOTNOTES

1. Missouri Rev. Stat. Ann., §204.006 et seq. (Supp.1972).
2. Missouri Rev. Stat. Ann., §204.021(1).
3. Id.
4. Id.
5. Missouri Rev. Stat. Ann., §204.021(4).
6. Missouri Rev. Stat. Ann., §204.026(1).
7. Missouri Rev. Stat. Ann., §204.026(2).
8. Missouri Rev. Stat. Ann., §§204.026(7), 204.036.
9. Missouri Rev. Stat. Ann., §§204.026(8)(9), 204.036.

10. Missouri Rev. Stat. Ann., §204.041.
11. Missouri Rev. Stat. Ann., §§204.026(13), 204.051(2)(3).
12. Missouri Rev. Stat. Ann., §204.076.
13. Missouri Rev. Stat. Ann., §204.071.
14. Missouri Rev. Stat. Ann., §204.136.
15. Missouri Rev. Stat. Ann., §250.010(1963). Note also that the various individual agencies have, in addition to §250.010, various other specific statutory powers and authorizations relating to management of sewage treatment facilities. E.g., first class cities, §§73.110(13), 73.120, 88.316; second class cities, §75.110(11)(14); third class cities, §§77.140, 77.150, 77.530, 91.090, 91.450; fourth class cities, §§79.380, 79.390, 91.010, 91.450; towns and villages, §§80.090(29), 88.832; and various types of county sewer districts, §§249.010, 249.763, 249.440.

16. I.e., Section 204.250(1) states:

> If the construction and maintenance of a common system of trunk sewers and sewage treatment plants is necessary to secure proper sanitary conditions for the preservation of public health in a natural drainage area the major portion of which lies within a county of the first class, containing all or part of a city having a population of four hundred fifty thousand or more, or second class, or in all counties of the third class now or hereafter having a population of more than thirty thousand inhabitants, with an assessed valuation of more than twenty-six million dollars, and containing all or part of a city having four hundred fifty thousand inhabitants, and which natural drainage area contains all or portions of several drainage basins, several municipalities or sewer districts, and if a common sewer district encompassing the entire area would be eligible for federal aid and assistance under the provisions of Title 33, Section 1151 et seq. of the United States Code Annotated, as now or as may hereafter be amended, the area may be established and incorporated as a common sewer district under Sections 204.250 to 204.470 in the following manner: The county court, or in charter counties, the county executive with the concurrence by resolution of the county legislature, of the county within which the major portion of the area lies may petition the circuit court having jurisdiction over the major portion for the

appointment of commissioners as herein provided, and to take further action as may be necessary for the submission to the legal voters residing in the area of the question whether the area shall be organized and incorporated as a common sewer district under Sections 204.250 to 204.470.

17. Missouri Rev. Stat. Ann., §250.020(1963).
18. Missouri Rev. Stat. Ann., §250.010(1).
19. Missouri Rev. Stat. Ann., §250-010(2).
20. Missouri Rev. Stat. Ann., §§204.290, 204.330, 204.350.
21. Cities, §250.040(4); sewer districts, §250.050(3)(1963); common sewer districts, §204.360(2), 204.460(1972).
22. Missouri Rev. Stat. Ann., §204.026(10)(Supp. 1972).
23. Missouri Rev. Stat. Ann., §204.136(2)(3).
24. Missouri Rev. Stat. Ann., §204.440(1972).
25. Id.
26. Missouri Rev. Stat. Ann., §250.240.
27. Missouri Rev. Stat. Ann., §204.330(Supp. 1972).
28. Missouri Rev. Stat. Ann., §204.440.
29. Missouri Rev. Stat. Ann., §250.240 reads as follows:

> It is the purpose of this chapter to enable cities, towns and villages and sewer districts to protect the public health and welfare by preventing or abating the pollution of water and creating means for supplying wholesome water, and to these ends every such municipality and sewer district shall have the power to do all things necessary or convenient to carry out such purpose in addition to the powers conferred in this chapter. This chapter is remedial in nature and the powers hereby granted shall be liberally construed.

30. See §250.030, which reads as follows:

> When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment to the municipality of amounts at least sufficient,

in the determination of such governing body, to compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the sewerage facilities serving such industrial establishment.

31. Missouri Rev. Stat. Ann., §§250.040(2), 250.050(2).
32. Missouri Rev. Stat. Ann., §250.060(1).
33. Missouri Rev. Stat. Ann., §250.060(3).
34. Cities, towns, and villages, 250.040(5); sewer districts, §250.050(4); common sewer districts, §204.360(3).
35. Missouri Rev. Stat. Ann., §§250.070(1); 204.370(1).
36. Missouri Rev. Stat. Ann., §§250.080(3); 204.380(3).
37. Missouri Rev. Stat. Ann., §§204.101(Supp. 1972).
38. Cities, towns and villages, §§250.220, 250.240, 250.190; sewer districts, §§250.190, 250.200, 250.240; common sewer districts, §204.290, 204.330, 204.440.
39. Missouri Rev. Stat. Ann., §204.330.
40. Op. Atty. Gen. No. 70, Peterson, 8-25-54. See also, §204.320.
41. Missouri Rev. Stat. Ann., §204.076.
42. Missouri Rev. Stat. Ann., §§250.230, 250.240, 250.250.
43. Missouri Rev. Stat. Ann., §§204.250, 204.330, 204.440.
44. Missouri Rev. Stat. Ann., §250.230.
45. Missouri Rev. Stat. Ann., §204.330(Supp. 1972).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

NEBRASKA REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

In 1971 the Nebraska legislature promulgated a comprehensive pollution control law known as the Environmental Protection Act.[1] The act concerns itself with the natural resources of water, air and land[2] and created a Department of Environmental Control[3] and an Environmental Control Council.[4] The director of the department is responsible for its administration and administration of standards, rules and regulations adopted by the council.[5] The department is vested with all the powers, duties and functions formerly vested in the Water Pollution Control Council...insofar as they are not inconsistent with the specific provisions of the Environmental Protection Act.[6] The department also is vested with all the powers, duties and functions that were formerly vested in the Department of Health relating to the prevention of water pollution.[7]

The Environmental Control Council (council, hereinafter) consists of sixteen members, gubernatorially-appointed by and with the advice and consent of the legislature, who serve four-year terms.[8] The council is responsible for adopting classification systems concerning pollutant sources as well as adopting standards of water quality.[9] Upon the basis of these classifications the Department of Environmental Control (department, hereinafter) is charged with promulgating rules and regulations concerning pollution control standards.[10] Before becoming effective these standards must be approved by the council.[11] The department is also vested with discharge permit-issuance authority and this process requires submission to it of plans, specifications and other data relative to disposal systems prior to approval of such systems and issuance of permits therefore.[12] The department is also primarily responsible for enforcement of pollution control laws.[13]

The department has a planning function and is vested with the duty to "develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the air, waters and land of the state."[14]

The chief executive officer of the department is the Director of Environmental Control, and is appointed by the Governor from a list of names submitted by the council, with the advice and consent of the legislature. The director is charged with administering the affairs of the department and serves at the pleasure of the Governor.[15]

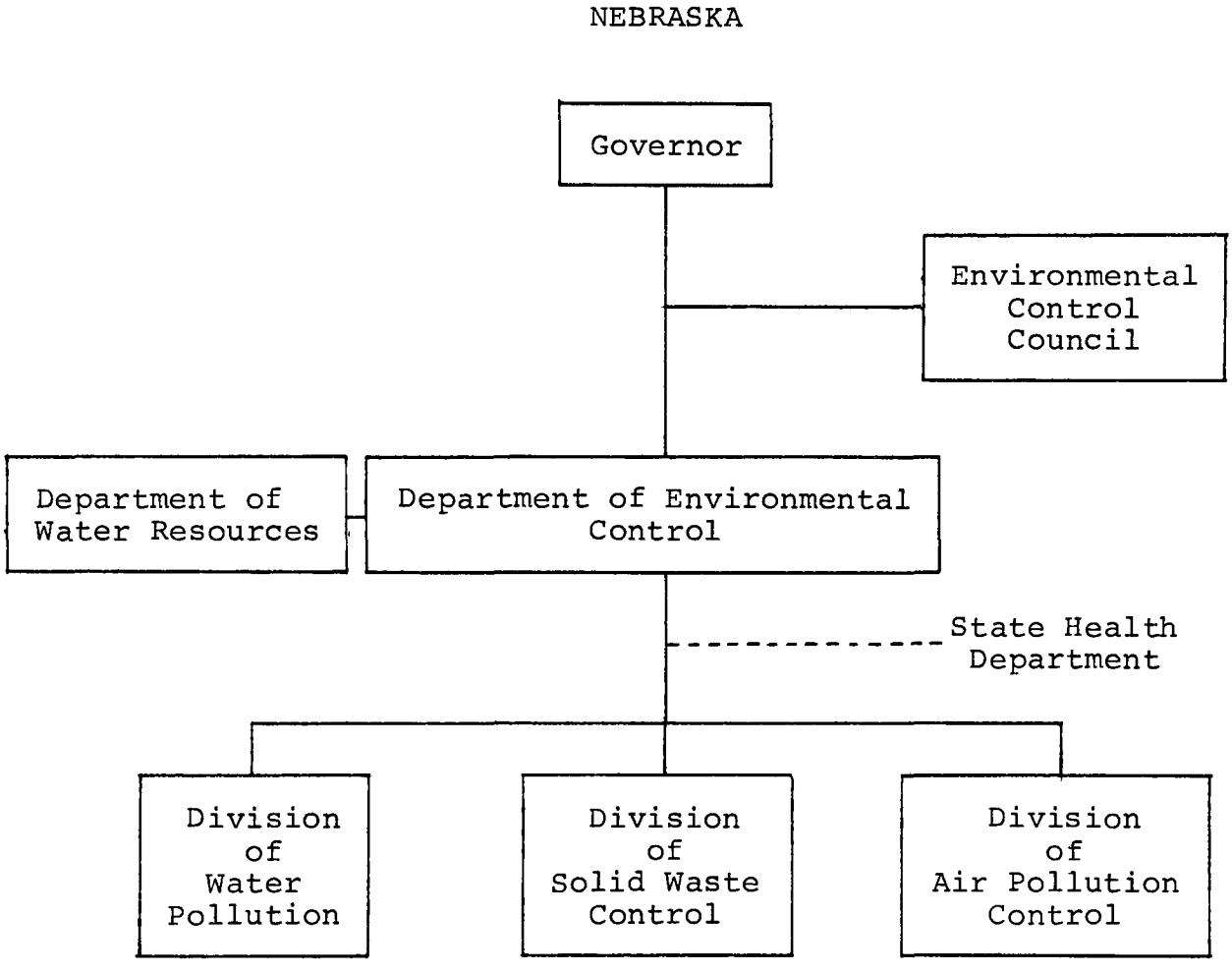
Appeals may be taken from any final order or other final determination of the director, by any person who is or may be adversely affected thereby, or by the Attorney General on behalf of the State of Nebraska, to the district court of Lancaster County.[16]

The department was granted the power to set up bureaus, divisions, or sections of air pollution control and a bureau, division, or section of water pollution control to be administered by full-time salaried bureau, division or section chiefs, and to delegate and assign to each such bureau, division, or section and the officers and employees therein, any duties or powers granted to the department.[17] The department has exercised this power and has established three divisions, one of which is the division of water pollution.[18]

The department has been designated as the state air pollution and water pollution control agency for this state for all purposes of the Federal Air Quality Act of 1967 and the Federal Water Pollution Control Act, as amended (33 United States Code 466), and for the administration of all federal and state grants and incentives for environmental protection, and it is authorized to take all action necessary or appropriate to secure to this state the benefits of those acts.[19]

Local management of sewage treatment facilities is conducted by cities and villages[20] and by boards of trustees in sanitary and improvement districts.[21] Sanitary and improvement districts may embrace any land within one or more counties but shall not include any land within a municipal corporation nor any tract of twenty acres or more which is outside any municipal corporation and is used primarily for industrial purposes without the written consent of the owner of such tract.[22]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Any city or village in Nebraska is authorized to own, construct, equip, and operate, either within or without the corporate limits of such municipality, a sewerage system, including any storm sewer system or combination storm and sanitary sewer system, and plant or plants for the treatment, purification, and disposal, in a sanitary manner, of the liquid and solid wastes, sewage, and night soil of such municipality or to extend or improve any existing storm or sanitary sewer system or combination storm and sanitary sewer system.[23]

Sanitary and improvement districts are vested with similar powers and would be able to comply with this provision.[24]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

The department of environmental control is specifically authorized to accept and administer loans and grants from the federal government and from other sources, public or private.[25] None of the local agencies are specifically authorized to accept such funds but without express provision to the contrary they should be able to. One method that might be utilized is for the department to accept such funds from the federal government and thereafter channel them to the local agencies.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All agencies possess the express statutory authority necessary for compliance with this provision.[26] In addition to the charging provisions discussed infra, cities and villages may assess a special levy upon benefited property up to two mills on the dollar upon the assessed value of all taxable property within such municipality.[27]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Neither agency is governed by a provision which specifically requires this but compliance would be permitted via the general charging authority of each agency. Cities and villages are authorized to establish "just and equitable" rates on charges for use of such sewerage system by each person, firm or corporation whose premises are served thereby.[28] Likewise, the board of trustees of sanitary and improvement districts are authorized to establish "just and equitable" rates or charges for: connections to and the use of their sewerage systems by each person, firm or corporation whose premises are served thereby.[29]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

None of the local agencies have express statutory authority which would assure compliance, or the possibility of compliance, with this provision. However, through their general powers of contract, their general charging powers[30] and their powers to establish rules and regulations[31] they would possibly be able to carry out this provision of the act.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

All management agencies are vested with broad bonding powers and may take up to forty (40) years to re-pay such debts.[32] The specific bonding powers of each agency are examined with more particularity infra.

The only potential problem that could arise regarding compliance with this provision is a special requirement imposed upon sanitary and improvement districts whereby the board of trustees is required, before issuing and selling any bonds of such district, to commence special proceedings, in and by which the proceedings of the board and of the district providing for and authorizing the issuance and sale of the bonds of the district shall be judicially examined, approved and confirmed, or disapproved and disaffirmed.[33]

2.4.1 General Obligation Funding.

Cities and villages may issue general obligation bonds for any purpose. The amount of such bonds shall not be included in the maximum amount of bonds which any municipality is authorized to issue and sell under its charter or any state statutes.[34] Before such issuance takes place a special election must be held in which more than a majority of the electors voting must vote in favor of such issuance.[35]

Sanitary and improvement districts may issue such bonds without a vote, and such bonds may bear not more than six percent interest.[36] The amount of such bonds may not exceed 15 percent of the assessed valuation of the taxable property in the district and the district is required to levy an annual tax sufficient to pay the interest and principal of the bonds as such interest and principal become due and payable.[37]

2.4.2 Special Funds and Revenue Funding.

All agencies involved are vested with the express statutory authority needed for compliance with this provision.[38] Such bonds are not to be included in computing the maximum amount of bonds which the said municipality is authorized to issue under its charter or any Nebraska statute.[39] When cities and villages issue such bonds they are required to assess sufficient charges so as to create a sinking fund which will assure payment of principal and interest when due.[40] No vote is required for issuance of revenue bonds.[41]

2.4.3 Other Methods of Financing.

The only other method of financing available to any of the agencies is the authority of improvement and sanitary districts to issue warrants for the purpose of making partial payments as construction progresses.[42] Such warrants may be paid out of the proceeds of bonds issued thereafter or from a sinking fund created by special assessments levied upon property especially benefited by such work or improvement.[43]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Cities and villages have the authority to extend treatment service beyond their corporate limits, "under the same conditions as nearly as may be as within such corporate limits and to

charge such users of its services 'reasonable and fair' rates consistent with those charged within such corporate limits and consistent with the expense of extending and maintaining the same for the users thereof outside such corporate limits at a fair return to the owner thereof."[44] Thus, if one community extends its services to another it appears that compliance would be assured.

Sanitary and improvement districts lack express statutory authority in this regard, but compliance could probably be attained via their general contracting powers[45] in combination with the authority to charge "just and equitable" rates.[46]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

All agencies involved have general rule and regulation making authority,[47] but such authority probably does not include the power to impose such a drastic sanction as this. However, an agency could refuse to treat certain types of sewage which would have deleterious effects upon the system itself through such rule making authority.[48] It might also be implied from such rule making authority that the agency could comply with this required authority.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

Agencies are not vested with specific legislative authority in this respect but could, in effect, comply with this provision via their general powers of contract. The department could certainly exercise the necessary authority to comply with this provision through its permit-granting powers (i.e., by withholding a permit).[49]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

The only authority discovered in this regard is vested in sanitary and improvement districts. They may, through their boards of trustees, make contracts or agreements whereby a person or corporation, public or private, furnishing water to the inhabitants of the district, shall turn off and refuse to sell water to any such water user who is delinquent in the payment of any sewer rental or service charges over forty-five days.[50]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I).

All agencies involved possess the requisite statutory authority needed to comply with this provision of the act.[51]

3.0 SUMMARY

Local management agencies in Nebraska have, for the most part, the sufficient statutory authority needed to assure compliance with the act. The few deficiencies noted are discussed infra, in Section 3.1.

3.1 Deficiencies

The local agencies lack the express statutory authority to accept grants from any source and legislation would be helpful to remedy this.

Express legislation could be passed to assure compliance with Sections 2.3.1 and 2.3.2 regarding charging powers, but such powers may reasonably be implied from current law.

Legislation should be passed to assure compliance -- by sanitary and improvement districts -- with the requirements of Section 2.5.

4.0 BIBLIOGRAPHY

1. Comment, Nebraska Sanitary and Improvement District Legislation, 5 Creighton L. Rev. 269(1970).

FOOTNOTES

1. Revised Statutes of Nebraska, §8-1501 et seq. (Cum. Supp. 1972). (Except where noted, references are to the 1972 Cum. Supp.)
2. Nebraska Rev. Stat. §81-1501.
3. Nebraska Rev. Stat. §81-1502(6).
4. Nebraska Rev. Stat. §81-1503(1).
5. Nebraska Rev. Stat. §§81-1503(7).
6. Nebraska Rev. Stat. §81-1503(6).
7. Id.
8. Nebraska Rev. Stat. §81-1503(1), (2).
9. Nebraska Rev. Stat. §81-1505(1).
10. Nebraska Rev. Stat. §81-1504(7), (8), (9). (Legal Counsel for the Department of Environmental Control

notes that 1973 amendments to the Environmental Protection Act provide that the department's function is administrative only and that it does not promulgate rules and regulations.)

11. Nebraska Rev. Stat. §81-1505(4).
12. Nebraska Rev. Stat. §§81-1504(12)(13)(22), 81-1506.
13. Nebraska Rev. Stat. §81-1504(24).
14. Nebraska Rev. Stat. §81-1504(2).
15. Nebraska Rev. Stat. §81-1503(7).
16. Nebraska Rev. Stat. §81-1509.
17. Nebraska Rev. Stat. §81-1504(16).
18. See schematic diagram in section 1.2, infra.
19. Nebraska Rev. Stat. §81-1503(11).
20. Nebraska Rev. Stat. §18-501 et seq. (1971)
21. Nebraska Rev. Stat. §31-701 et seq.
22. Nebraska Rev. Stat. §31-702.
23. Nebraska Rev. Stat. §18-501. (1971)
24. Nebraska Rev. Stat. §31-708.
25. Nebraska Rev. Stat. §81-1504(4).
26. Cities and villages, §§18-501(3)(4), 18-503, 18-508, 18-509, and 18-512; sanitary and improvement districts, §§31-711.01, 31-711.02, and 31-722(1971).
27. Nebraska Rev. Stat. §§18-501(3)(4), 18-512. (1971)
28. Nebraska Rev. Stat. §18-503, see also §18-508. (1971)
29. Nebraska Rev. Stat. §31-722. (1971)
30. See note 26, supra.
31. Cities and villages, §18-503; sanitary and improvement districts, §31-722. (1971)
32. Cities and villages, §§18-502, 18-506; sanitary and improvement districts, §§31-709, 31-717, 31-724. (1971)
33. Nebraska Rev. Stat. §31-717 et seq. (1971)
34. Nebraska Rev. Stat. §18-506. (1971)
35. Nebraska Rev. Stat. §18-506.01. (1971)
36. Nebraska Rev. Stat. §31-709. (1971)
37. Id.
38. Cities and villages, §§18-502, 18-504; sanitary and improvement districts, §31-709. (1971)
39. Id.
40. Nebraska Rev. Stat. §18-504(2)(3). (1971)
41. Nebraska Rev. Stat. §18-506.01. (1971)
42. Nebraska Rev. Stat. §31-709.01. (1971)
43. Id.
44. Nebraska Rev. Stat. §18-508. (1971)
45. Nebraska Rev. Stat. §31-709. (1971)
46. Nebraska Rev. Stat. §31-722(1971). See test accompanying note 29, supra.
47. Cities and villages, §18-503; sanitary and improvement districts, §31-722. (1971)

48. Id.
49. See note 12, supra.
50. Nebraska Rev. Stat. §31-722. (1971)
51. Cities and villages, §18-503; sanitary and improvement districts, §31-722. (1971)

REGION VIII

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

COLORADO REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

The State Water Pollution Control Commission ("Commission") is responsible for regulating and enforcing Colorado's water pollution control laws and is the state water pollution control agency for all purposes of the Federal Water Pollution Control Act.[1] The Commission is given a legislative directive "to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water"[2] but waters in sewerage systems and treatment works are specifically excluded.[3]

The Commission is given wide latitude to discover[4] and regulate water quality and pollutant discharge.[5] However, enforcement of most water quality and waste discharge standards are obtained through court enforced injunctions after an administrative hearing and not by a permit system.[6] The Commission does regulate use of septic tanks[7] and disposal of radioactive, "toxic," or potentially explosive materials through a permit system.[8]

The Commission must approve the site for any municipal sewage treatment works, giving consideration to the "long-range comprehensive planning for the area."[9] The Commission also administers any state funds appropriated for use in conjunction with federal funds granted under the Federal Water Pollution Control Act to be used in the construction of sewage treatment works.[10] The funds are administered through contracts with a "municipality."[11]

In Colorado there are four potential management agencies: (1) Special Improvement Districts (hereinafter called special districts); (2) Metropolitan Sanitation Districts (hereinafter called metropolitan districts); (3) Sanitation Districts; (4) Metropolitan Sewage Disposal Districts (hereinafter called MSDDs).

Special districts generally mean geographical divisions within a city or incorporated town but may include an entire municipal area.[12] One or more noncontiguous parts of a municipality may be included in such a district.[13] In addition, contiguous cities and towns may engage in cooperative sewage treatment.[14] Special districts are created by ordinance.[15]

A metropolitan district may be entirely within or entirely without, or partly within and partly without, one or more municipalities[16] and may consist of noncontiguous areas; but, parcels of land larger than 20 acres with an assessed valuation of more than $25,000 may not be included in a district without the owner's consent.[17] A metropolitan district may extend its sewer lines to a source of supply or an outlet without the district.[18]

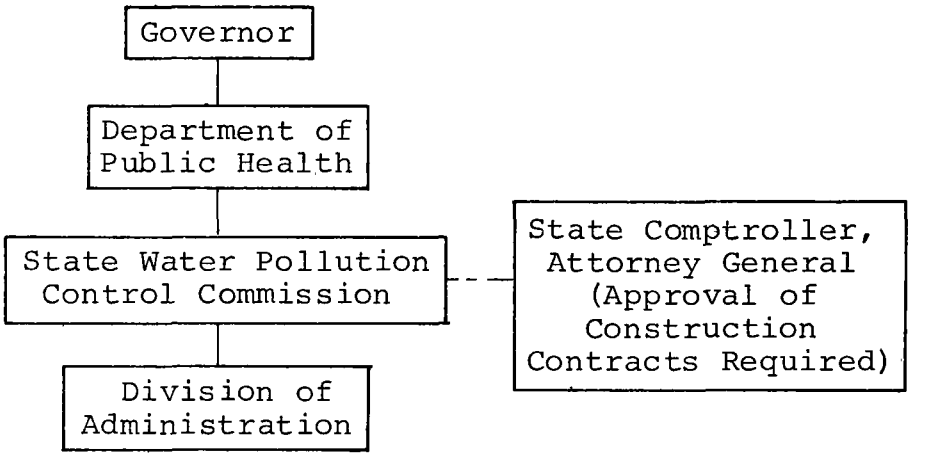
A sanitation district may be entirely within or entirely without, or partly within and partly without one or more municipalities or counties and the district may consist of noncontiguous tracts of land.[19] A sanitation district may also extend its sewer lines to an appropriate outlet outside the district.[20] A tract of property of the same size and value described above for a metropolitan district may be excluded if the owner does not consent to its inclusion and property within any home rule municipal corporation may be excluded if that municipality so desires.[21] Both a metropolitan and sanitation district are formed by a majority vote of the electorate of the proposed district after either 10% or 100 taxpayers (whichever is smaller) of the proposed district submit a petition.[22]

A MSDD may be composed of territory included within the corporate boundaries of any two or more municipalities which need not be contiguous and need not be located in the same county.[23] Such districts are created by ordinances of municipalities within the district.[24] A MSDD may receive wastes from outside the district.[25]

It should be pointed out here and be remembered throughout the report that the definition of "municipality" for purposes of a MSDD is broad enough to include any or all of the other three management agencies.[26] Therefore, a MSDD may contain not only those powers specifically granted a MSDD but also the powers granted another management agency within the boundaries of a MSDD. The definition of "municipality" is also important to remember when discussing the powers a MSDD may have over the "municipalities" within a MSDD.

1.2 Schematic Diagram of Existing Agencies

Colorado Water Pollution Control Administration



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Any city or incorporated town may establish and maintain sewer systems and sewage disposal plants[27] and improvements in special districts may consist of the same.[28]

Both metropolitan and sanitation districts are given this authority.[29]

A MSDD is to be organized for the purpose of "acquiring, by construction or otherwise, owning, holding and operating a sewage disposal system."[30] A MSDD may also contract with a municipality or person concerning "planning, construction, lease or other acquisition, operation, maintenance . . . and the financing of any project."[31]

The only restriction on the above powers of all the management agencies is the control of site selection of municipal sewage treatment works exercised by the Commission (see paragraph 1.1).

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

As mentioned in paragraph 1.1 the Commission administers state funds through contracts with "municipalities."[32] A recent amendment specifically provides that "municipalities" "shall apply for" and be "eligible" for federal "construction" grants.[33] "Construction" and "eligible project" are broadly defined.[34] Prior to this recent amendment special districts had no authority to receive grants.

Metropolitan and sanitation districts have the power to contract with the United States[35] and metropolitan districts could contract with the state.[36] The recent amendment has made their ability to accept grants much clearer.

A MSDD is specifically authorized to receive federal funds[37] and may "accept grants and contributions from any public body or other person in connection therewith."[38]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Special districts have no authority to assess waste treatment charges. Cities or towns may assess the cost of construction of sewers, sewage disposal works and renewal or extensions thereof wholly, or in part, upon the property "especially benefited" by such improvements.[39] The costs of sanitary sewers may be assessed on all real estate in the district as the area of each piece of real estate is to the area of the whole district.[40]

Metropolitan districts have the power to fix rates and charges for "services furnished" by the district.[41] However, revenues from such charges are pledged to pay the indebtedness of the district[42] and it is difficult to imply that such a charging system could accurately reflect the costs of treatment. Metropolitan districts also have the power to level ad valorem taxes against all property within the district and such taxes are used to pay both the districts' indebtedness and the operating expenses of a sewage system.[43] This is also an inadequate charging system.

Sanitation districts may assess charges for making facilities available.[44] While such rates must be "reasonable" they are to be assessed "solely for the purpose of paying principal

and interest on any outstanding indebtedness of the district."[45] Sanitation districts may also levy taxes to pay operating expenses but such taxes are property taxes.[46] A sanitation district may levy taxes to create a sinking fund.[47] This charging system does not meet the requirements of the Act.

MSDD and municipalities within a MSDD may assess waste treatment charges clearly based upon the property criteria.[48] A MSDD itself may levy general ad valorem taxes on all taxable property within the district, but this may be done only during the first five years of the district's existence and only to the extent of 3/4 mill.[49] Municipalities within the district may assess annual general ad valorem taxes sufficient to pay the service rates imposed by the MSDD.[50]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

As noted in paragraph 2.3 special districts have no authority to assess waste treatment charges and may charge for construction and maintenance only on an "area proportion" basis.[51] However, contiguous municipalities may engage in cooperative ventures concerning sewage treatment and "common construction or use shall be upon such terms as regards the apportionment of cost as may be agreed upon" by such municipalities.[52] Therefore, it may be assumed that at least as between municipalities of a special district this requirement is met.

In metropolitan and sanitation districts, general ad valorem taxes are used to pay "the costs of constructing, operating and maintaining the works and equipment of the district."[53] This is not sufficient to meet the requirements of the Act.

MSDDs or municipalities within a MSDD may use a charging system to meet these requirements[54] and may also create a sinking fund out of such charges.[55] Charges may be based upon:

> . . . any other factors determining the type, class and amount or use or service of the sewage disposal or sewer system; or on any combination of any factors; and may give weight to the characteristics of the sewage and other wastes and any other special matter affecting the cost of treatment and disposal thereof . . . .[56]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Special districts and cities and incorporated towns may assess the costs of construction wholly on "property especially benefited,"[57] but this would not be an adequate assessment system.

Metropolitan and sanitation districts use general ad valorem taxes to recover the construction costs, and this would be inadequate.

Therefore, only MSDDs and municipalities within a MSDD may have such a power implicit in their broad powers for assessing waste treatment charges. (See paragraph 2.3.1 above).

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

As will be noted below, all management agencies have some form of bonding power.

2.4.1 General Obligation Funding.

Cities or towns may contract indebtedness either by borrowing or by issuing negotiable interest bearing bonds of the city or town (subject to constitutional debt limitations). The debt can run not less than ten or more than fifteen years, and, though created by ordinance, must first be approved by the electorate.[58]

Metropolitan and sanitation districts may "borrow money and incur indebtedness and evidence the same by certificates, notes, or debentures" and may issue bonds.[59] However, all bonds or obligations issued by a metropolitan district "will be general obligation bonds on the entire district."[60] It should be noted here that in metropolitan and sanitation districts service charges as well as general ad valorem taxes are employed to pay off the indebtedness.[61]

Metropolitan and sanitation districts may issue negotiable coupon bonds of the district with a maturity of not less than 3 years nor more than twenty. Any indebtedness (including a contract with the United States government) which exceeds $5000 or 1% of the assessed property valuation within the district (whichever is the larger amount) requires electorate approval.[62]

An MSDD may borrow money to defray the cost of any project and issue the following securities of any project and issue the following securities to evidence such borrowing: Debentures, warrants, bonds, interim receipts, temporary certificates, temporary bonds and notes.[63] Any of these obligations may be secured through either general or special obligations and the district may pledge its full faith and credit.[64] However, the issuance of bonds and the net effective interest rate of bonds must first be submitted to the electorate of the district and maturity may not exceed 40 years.[65]

2.4.2 Special Funds and Revenue Funding.

A special district may issue special assessment bonds to be funded and repaid from assessments on property "specially benefited."[66] Maturity is to last a sufficient number of years to cover the period of payment of the special assessment.

As noted in paragraph 2.4.1, bonds issued by a metropolitan or sanitation district are a hybrid general-special funding creation since revenues from service charges are pledged to paying off a district's indebtedness.

Also noted in paragraph 2.4.1, a MSDD may choose to fund its variety of obligations through special or revenue funding. These will be discussed in paragraph 2.4.3 below.

2.4.3 Other Methods of Financing.

As noted in paragraph 1.1, the State Water Pollution Control Commission may contract with "municipalities" to provide state funds for construction of sewage treatment works.

Beyond this, the only management agency with alternate methods of financing is a MSDD. Among the choices available are:

1. Debentures -- these are issued in anticipation of taxes or revenues or both when borrowing money. No electorate approval is required.[67]

2. Warrants -- these are issued to defray any expenses of the district. No electorate approval is required.[68] However, both debentures and warrants may not exceed two years unless approved by the electorate or used in supplementation of voter-approved long-term financing.[69]

3. Interim receipts, temporary certificates and temporary bonds -- these are issued pending preparation of definitive bonds and exchangeable for them upon preparation.[70]

4. A MSDD may issue notes and pledge bonds approved by the electorate as collateral security. Notes must mature within 2 years after the project for which the bonds were issued is completed.[71]

5. Ad valorem taxes -- see paragraph 2.3.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

As noted in 2.3.1 contiguous communities cooperating in a special district may allocate costs among themselves.

Metropolitan districts charge for services provided by a sewage system through a property tax, but "shall have the right to fix different rates of levy for tax purposes against all of the taxable property within the several areas of the district according to the services furnished."[72] Thus, metropolitan districts may have some implied potential for meeting this requirement, but it would be achieved through the cumbersome method of a tax levy.

MSDDs should have little problem meeting this requirement for a MSDD is is given the power to fix charges to municipalities within the district for services furnished[73] and such charges must be "practicable and equitable."[74]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

No management agency is expressly granted the power to refuse wastes for failure to comply with an areawide plan. Metropolitan and sanitation districts may cut off service for failure to pay charges, and this includes service to municipalities.[75]

In addition, metropolitan and sanitation districts, MSDDs and municipalities within an MSDD, may prescribe and enforce "reasonable rules and regulations . . . for . . . the disconnection from the sewer system of the public body or other sanitation or sewer facilities thereof."[76] This may imply a refusal power.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

All management agencies have authority to compel "hook-ups."[77]

A metropolitan district may divide the district into areas according to the facilities to be furnished, but if the district "finds it infeasible, impracticable or undesirable for the good of the entire district to extend . . . sewer lines . . . to any part of the district . . ." the district may designate such areas as not to be served with facilities.[78] No "area" shall be less than 10 acres.

Municipalities which wish to be included within a MSDD may submit a request, but the MSDD must find that the new municipality may "feasibly be served by the facilities of the district."[79] The MSDD may set "terms and conditions" upon such inclusion.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

There are no express statutory sanctions for failure to comply with an areawide plan.

An MSDD, however, may enforce the rates and charges made to municipalities within the district by a writ of mandamus to compel a municipality "without limitation as to rate or amount" ad valorem taxes on all taxable property within the municipality and delinquency charges may be assessed.[80]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208 (c)(2)(I)].

Special districts are given neither express nor implied authority to accept or reject industrial wastes.

Metropolitan and sanitation districts have no express authority to accept or reject industrial wastes, but they may enter into "contracts and agreements affecting the affairs of the district."[81] This may be broad enough to include an authority to set pretreatment standards for acceptance of industrial wastes.

The definition of "sewage disposal system" specifically includes facilities for the "interception, transportation, treatment,

purification or disposal of . . . industrial wastes" in the provisions governing MSDDs.[82] In addition, an MSDD may prescribe and enforce reasonable rules and regulations "for the availability of service from, the connection with, the use of . . . a sewage disposal system."[83] This meets the requirements of the Act.

3.0 SUMMARY

Special districts, metropolitan districts and sanitation districts clearly fail to meet some of the major requirements of the Act. On the other hand, MSDDs either expressly or impliedly meet all the requirements of the Act and are unquestionably the best potential areawide management agency.

3.1 Deficiencies

As noted in the foregoing paragraphs, special districts, metropolitan districts and sanitation districts would require a major overhaul to meet the requirements of the Act, but their most obvious deficiency is lack of an adequate waste treatment charging system.

While MSDDs qualify in all requirements of the Act, either expressly or impliedly, it would be best to statutorily change implied powers to express powers. Examples of where this may be done is in the setting of pre-treatment standards for industrial wastes and recovery of the federally funded portion of construction costs from industrial users. MSDDs should also have clearer authority and sanctions where there is a failure to comply with an areawide plan.

4.0 BIBLIOGRAPHY

1. Colorado Legislative Council, Water Pollution in Colorado: Report to the Colorado General Assembly (1966).

2. Morrisson, Frank H., State and Local Regulation of Water Pollution, Natural Resources Lawyer, Vol. III, p. 47 (1970).

3. Water Pollution Control Commission (Colorado Department of Health), Water Quality Standards and Stream Classification (1971).

4. Water Pollution Control Commission (Colorado Department of Health), Water Pollution Control Progress Report, 1966-1971 (1971).

FOOTNOTES

1. Colo. Rev. Stat. §66-28-3(6) (Perm. Cum. Supp. 1967).
2. Colo. Rev. Stat. §66-28-1 (Perm, Cum. Supp. 1967).
3. Colo. Rev. Stat. §66-28-2(g) (Perm. Cum. Supp. 1967).
4. Colo. Rev. Stat. §66-28-6 (Perm. Cum. Supp. 1967).
5. Colo. Rev. Stat. §66-28-5 (Perm. Cum. Supp. 1967).
6. Colo. Rev. Stat. §66-28-10 (Perm. Cum. Supp. 1967).
7. Colo. Rev. Stat. §66-28-8(5) (Perm. Cum. Supp. 1973).
8. Colo. Rev. Stat. §66-28-9 (Perm. Cum. Supp. 1973).
9. Colo. Rev. Stat. §66-28-13 (Perm. Cum. Supp. 1967).
10. Colo. Rev. Stat. §66-28-23 (Perm. Cum. Supp. 1973).
11. Colo. Rev. Stat. §66-28-23 (Perm. Cum. Supp. 1973); "[M]unicipality" means any county, sanitation district, water and sanitation district, metropolitan sewage disposal district, service authority, city and county, city, town, Indian tribe or authorized Indian tribal organization, or any two or more of them which are acting jointly in connection with an eligible project. Colo. Rev. Stat. §66-28-22(5) (Perm. Cum. Supp. 1973).
12. Colo. Rev. Stat. §89-2-5 (1963).
13. Id.
14. Colo. Rev. Stat. §89-2-10 (1963).
15. Colo. Rev. Stat. §89-2-1 (1963).
16. Colo. Rev. Stat. §89-3-3(1) (Perm. Cum. Supp. 1965).
17. Colo. Rev. Stat. §89-3-3(3) (Perm. Cum. Supp. 1965).
18. Colo. Rev. Stat. §89-3-3(4) (Perm. Cum. Supp. 1965).
19. Colo. Rev. Stat. §89-5-2(3) (1963).
20. Colo. Rev. Stat. §89-5-2(2) (1963).
21. Colo. Rev. Stat. §89-5-7(2) (1963).
22. Metropolitan Districts, Colo. Rev. Stat. §89-3-5 (Perm. Cum. Supp. 1971); Sanitation Districts, Colo. Rev. Stat. §89-5-4 (Perm. Cum. Supp. 1971).
23. Colo. Rev. Stat. §89-15-3(1) (1963).
24. Colo. Rev. Stat. §89-15-4 (1963).
25. Colo. Rev. Stat. §89-15-12 (1963).
26. Colo. Rev. Stat. §89-15-2(4) (1963).
27. Colo. Rev. Stat. §89-2-9 (1963).
28. Colo. Rev. Stat. §89-2-2 (1963).
29. Metropolitan Districts, §§89-3-2(2), 89-3-14(8) (1963); Sanitation Districts, §§89-5-2(2), 89-5-13(4) (1963).
30. Colo. Rev. Stat. §89-15-3(1) (1963); see also §89-15-6(12) (1963).
31. Colo. Rev. Stat. §89-15-6-20 (1963).
32. See note 11.
33. Colo. Rev. Stat. §66-28-23(3) (Perm. Cum. Supp. 1973).
34. Colo. Rev. Stat. §66-28-22 (Perm. Cum. Supp. 1973).

35. Metropolitan Districts, Colo. Rev. Stat. §89-3-14(4) (1963); Sanitation Districts, Colo. Rev. Stat. §89-5-13(4) (1963).
36. Colo. Rev. Stat. §89-3-14(4) (1963).
37. Colo. Rev. Stat. §89-15-16(18) (1963).
38. Colo. Rev. Stat. §89-15-16(19) (1963).
39. Colo. Rev. Stat. §89-2-1 (1963).
40. Colo. Rev. Stat. §89-2-12 (1963).
41. Colo. Rev. Stat. §89-3-14(13) (1963).
42. Colo. Rev. Stat. §89-3-19 (1963).
43. Colo. Rev. Stat. §89-3-19 (1963).
44. Colo. Rev. Stat. §89-5-13(12)(a) (Perm. Cum. Supp. 1971).
45. Colo. Rev. Stat. §89-5-13(12)(c) (Perm. Cum. Supp. 1971).
46. Colo. Rev. Stat. §89-5-15 (1963).
47. Colo. Rev. Stat. §89-5-19 (1963).
48. Colo. Rev. Stat. §89-15-21 (1963).
49. Colo. Rev. Stat. §89-15-6(9) (1963).
50. Colo. Rev. Stat. §89-15-6(14) (1963).
51. Colo. Rev. Stat. §89-2-1 (1963).
52. Colo. Rev. Stat. §89-2-10 (1963).
53. Metropolitan Districts, Colo. Rev. Stat. §89-3-17 (1963); Sanitation Districts, Colo. Rev. Stat. §89-5-15 (1963).
54. Colo. Rev. Stat. §89-15-21(b)(e) (1963).
55. Colo. Rev. Stat. §89-15-21(d) (1963).
56. Colo. Rev. Stat. §89-15-21(2)(a) (1963).
57. Colo. Rev. Stat. §89-2-1 (1963).
58. Colo. Rev. Stat. §89-2-29 (Perm. Cum. Supp. 1971).
59. Colo. Rev. Stat. §89-3-14(5) (1963).
60. Colo. Rev. Stat. §89-3-17 (1963).
61. Colo. Rev. Stat. §89-3-19 (1963).
62. Colo. Rev. Stat. §89-5-24 (Perm. Cum. Supp. 1971).
63. Colo. Rev. Stat. §89-15-22 (1963).
64. Colo. Rev. Stat. §89-15-23 (1963).
65. Colo. Rev. Stat. §89-15-22(5) (Perm. Cum. Supp. 1971).
66. Colo. Rev. Stat. §89-2-30 (1963).
67. Colo. Rev. Stat. §89-15-22(2) (1963).
68. Colo. Rev. Stat. §89-15-22(3) (1963).
69. Colo. Rev. Stat. §89-15-22(4) (1963).
70. Colo. Rev. Stat. §89-15-22(6) (1963).
71. Colo. Rev. Stat. §89-15-34 (1963).
72. Colo. Rev. Stat. §89-3-20 (1963).
73. Colo. Rev. Stat. §89-15-6(13) (1963).
74. Colo. Rev. Stat. §89-15-21 (1963).
75. Metropolitan Districts, Colo. Rev. Stat. §89-3-19 (1963); Sanitation Districts, Colo. Rev. Stat. §89-5-13(12) (1963).
76. Metropolitan District, Colo. Rev. Stat. §89-3-19 (1963); Sanitation District, Colo. Rev. Stat. §89-5-13(12) (1963); MSDD, Colo. Rev. Stat. §89-15-20(8) (1963).

77. Special Districts, Colo. Rev. Stat. §89-2-10 (1963); Metropolitan Districts, Colo. Rev. Stat. §89-3-15 (1963); Sanitation Districts, Colo. Rev. Stat. §89-5-13(12) (1963); MSDD; Colo. Rev. Stat. §89-15-36(3) (1963).
78. Colo. Rev. Stat. §89-3-20 (1963).
79. Colo. Rev. Stat. §89-15-9 (1963).
80. Colo. Rev. Stat. §89-15-6(14) (1963).
81. Metropolitan Districts, Colo. Rev. Stat. §89-3-14(4) (1963); Sanitation Districts, Colo. Rev. Stat. §89-5-13(12) (1963).
82. Colo. Rev. Stat. §89-15-2(11) (1963).
83. Colo. Rev. Stat. §89-15-20(8) (1963).

CAVEAT: This report is based on Colorado laws, as amended, through July, 1972. A letter from Alfred L. Capra, General Counsel of the Colorado Department of Health, dated April 16, 1973, indicates that major revisions of Colorado laws are underway.

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

MONTANA REPORT
(1971)

1.0 OVERVIEW

1.1 Description of Existing Agencies

The Montana Department of Health is the administering agency for the state's water pollution control laws.[1]

Some of the duties and powers of the department are the following:

(a) to issue or deny discharge permits[2] which are required before any sewage or industrial wastes are discharged into state waters;[3]
(b) to issue orders to abate pollution;[4]
(c) to enter upon private or public property to investigate conditions relating to pollution of state waters;[5]
(d) to accept grants from the federal government;[6] and
(e) set water quality standards.[7]

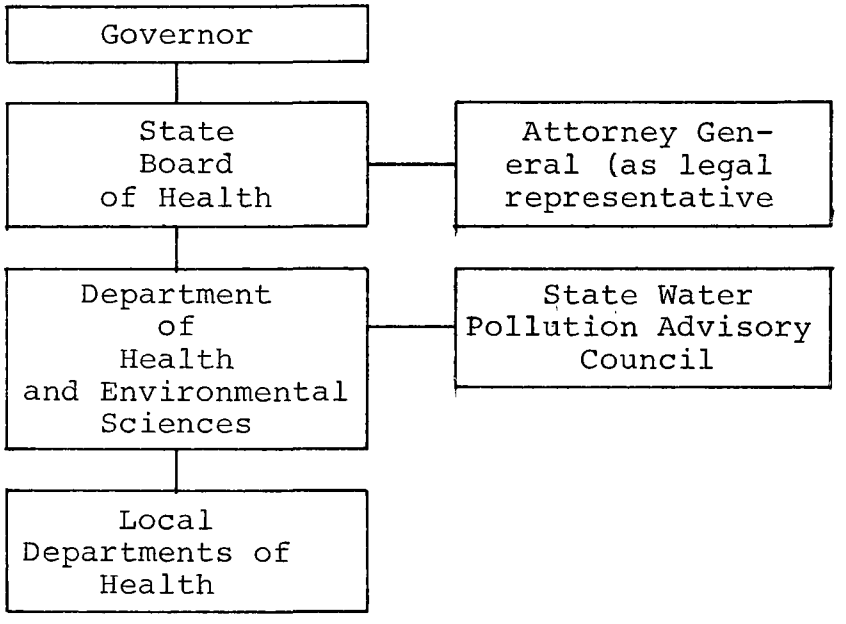
There are three entities which may render waste treatment services (i.e., management agencies): cities and towns (hereinafter referred to as "municipalities"),[8] metropolitan sewer districts (hereinafter referred to as "MSD's")[9] and county sewer districts (hereinafter referred to as "CSD's").[10]

Before municipalities may construct a sewer system the approval of a majority of taxpayers voting on the issue must be obtained.[11]

MSD's are created by resolution of the board of county commissioners and by a concurring resolution of the council of the city or town situated with the boundary of a MSD.[12] Without the council's concurring resolution, the board of county commissioners has no authority to proceed further with the creation of the district.[13]

Upon the petition of ten percent of the registered voters residing within the proposed CSD the board of county commissioners may create a CSD.[14] A CSD may lie within one or more counties and may include the whole or part of a municipality.[15]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

As was noted in paragraph 1.1, three treatment management agencies will be considered throughout this report: municipalities, MSD's and CSD's.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required By Any Areawide Plan. [§208(c)(2)(C)].

Municipalities, MSD's and CSD's are all authorized to construct, operate and maintain treatment plants.[16]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, For Waste Treatment Management Purposes. [§208(c)(2)(D)].

Only MSD's and CSD's are specifically authorized to receive grants and funds for waste treatment management purposes.[17]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

As will be noted below, all three management agencies have charging authority.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Municipalities may charge on any equitable basis for the treatment services it renders and such charges must be sufficient to pay for operation and maintenance costs.[18] Such rates and charges may be "in proportion to the services and benefits rendered . . . and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general."[19]

MSD's can clearly comply with the requirements of this paragraph since the charging basis may also take into consideration "the quantity of sewage produced and its concentration and water pollution qualities in general," and since the charges must be sufficient to cover operation and maintenance costs.[20]

CSD's may charge to the amount necessary to cover, among other things, operation and mainteance costs.[21] There is, however, no express provision that would require that each user pay its proportionate share of costs of treatment, but this may be implied from the general power to charge.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Municipalities and MSD's may assess a tax upon all property in the municipality or district in order to defray construction costs.[22] However, the tax is based on the extent of every user's property instead of the costs "of the treatment works" reasonably attributable to treatment of such industrial wastes.

CSD's are not specifically authorized to recoup construction costs.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

As will be noted below, all three agencies under consideration have bonding authority.

2.4.1 General Obligation Funding.

Although MSD's are not specifically authorized to issue bonds, one provision does mention "MSD bonds."[23] It must be assumed that the "bonds" mentioned are general obligation bonds which the county commissioners (the governing body of a MSD) are authorized to issue.[24] Such bonds shall not cause county indebtedness to exceed two and one-half percent of the value of taxable property therein[25] and must expire no later than 20 years after their issuance.[26]

Since the governing body of a CSD is also the county commissioners, CSD's should also be able to issue general obligation bonds.

Municipalities have no express authority to issue general obligation bonds for the purpose of financing sewer system construction.

2.4.2 Special Funds and Revenue Funding.

The governing body of a municipality may be resolution issue revenue bonds having a maximum maturity period of forty years.[27] No prior authorization by voters is required.

CSD's may also issue revenue bonds having a maximum maturity period of forty years.[28] However, a two-thirds majority of votes cast by taxpayers residing within the district must first authorize such bonded indebtedness.[29]

MSD's are not authorized to issue revenue bonds.

2.4.3 Other Methods of Financing.

As was noted in paragraph 2.3.2, municipalities and MSD's may also assess taxes in order to raise revenues. In addition CSD's may assess taxes if the revenues of the district are inadequate to pay interest or principal on any bonded debt as it becomes due.[30]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

There are no specific provisions which absolutely insure that each community will pay its proportionate share of the costs. As was noted in paragraph 2.3.1, however, municipalities, MSD's and, possibly, CSD's can assure that each individual user will pay his proportionate share and this, in turn, may satisfy this paragraph's requirements.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of the agencies under consideration may refuse to receive a noncomplying municipality's waste.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

None of the treatment agencies have "moratorium powers." However, the Montana Department of Health can deny a permit to discharge waste where its rules and regulations are being violated.[31] As was noted earlier, part of the regulations consist of water quality standards.[32] Thus, this permit-denying power may give the department substantial "moratorium" powers.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

None of the treatment agencies are specifically authorized to impose penalties and surcharges on noncomplying municipalities.

2.7 Authority to Accept For Treatment Industrial Wastes. [§208(c)(2)(I)].

Although there is no specific provision which would allow any of the treatment agencies to receive industrial waste, the statutes are phrased broadly enough so as not to exclude industrial users.

On the other hand, none of the treatment agencies are granted express authority to require industrial pretreatment of waste. The permit issuing authority of the Department of Health, however, should again insure that the wastes meet a certain standard before they can be discharged into the sewer system. Pretreatment might also be authorized under the general power of all local agencies to maintain their facilities, at least where untreated wastes would cause harm to the system.

The Department of Health is the only water pollution control agency which can conduct investigations on public or private property.[33] However, any confidential material acquired by the department may not be disclosed to the public,[34] and fines are imposed on those making such disclosures.[35]

3.0 SUMMARY

Under the present statutory set-up in Montana, the following inadequacies exist:

(1) municipalities are not specifically authorized to receive grants for waste treatment purposes;
(2) CSD's may not recoup non-bonded construction costs and compliance with paragraph 2.3.2 is doubtful because of an improper charging (taxing) basis;
(3) none of the treatment agencies have the power to refuse municipal waste, nor do they have lesser powers to coerce a municipality's compliance;
(4) there is no express authority to require pretreatment by industrial users.

4.0 BIBLIOGRAPHY

Montana State Water Pollution Control Council Policy Statements (furnished by the State Department of Health and Environmental Sciences, undated).

FOOTNOTES

1. Montana Rev. Code §69-4801 et seq.
2. Montana Rev. Code §69-4809.1(a).
3. Montana Rev. Code §69-4806.
4. Montana Rev. Code §69-4809.1(2)(b).
5. Montana Rev. Code §69-4809.1(2)(a).
6. Montana Rev. Code §69-4808.2(2)(a).
7. Montana Rev. Code §69-4808.2(1)(6).
8. Montana Rev. Code §11-2217 et seq.
9. Montana Rev. Code §16-4401 et seq.
10. Montana Rev. Code §16-4501 et seq.
11. Montana Rev. Code §11-2217.
12. Montana Rev. Code §16-4402.
13. Montana Rev. Code §16-4402.
14. Montana Rev. Code §§16-4503, -4505.
15. Montana Rev. Code §16-4502.
16. Montana Rev. Code §§11-2217, 16-4407, -4514(5), respectively. (Although MSD's are not specifically authorized to carry out these management functions, §16-4407 provides that MSD's may charge for the construction and operation of facilities they provide, thereby implying the required authorization).

17. Montana Rev. Code §§16-4412, -4514(8), respectively.
18. Montana Rev. Code §11-2219.
19. Montana Rev. Code §11-2217.
20. Montana Rev. Code §16-4416.
21. Montana Rev. Code §16-4526.
22. Montana Rev. Code §§11-2222, 16-4408.
23. Montana Rev. Code §16-4417.
24. Montana Rev. Code §16-2008(b).
25. Montana Rev. Code §16-2010.
26. Montana Rev. Code §16-2011.
27. Montana Rev. Code §11-2218(1).
28. Montana Rev. Code §16-4517.
29. Montana Rev. Code §16-4522.
30. Montana Rev. Code §16-4527.
31. Montana Rev. Code §69-4806.
32. See note 7 and text accompanying, supra.
33. See note 5 and text accompanying, supra.
34. Montana Rev. Code §69-4822.
35. Montana Rev. Code §69-4823.

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

NORTH DAKOTA REPORT
(1973)

1.0 OVERVIEW

1.1 Description of Existing Agencies

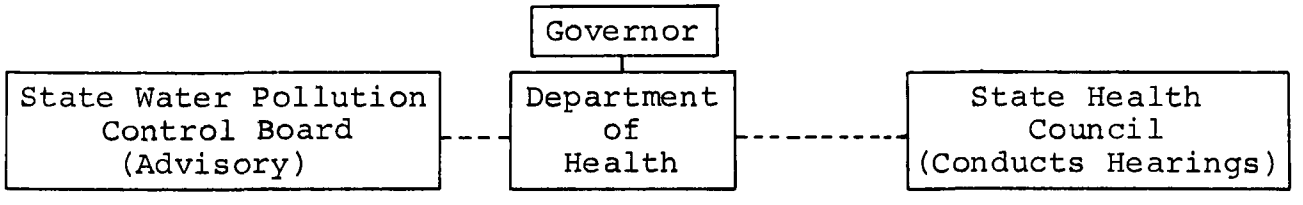
The State Department of Health is the administering agency for North Dakota's water pollution control laws.[1]

Some of the duties and powers of the department are: (1) to develop comprehensive programs for the prevention, control and abatement of pollution;[2] (2) to accept and administer grants from the federal government -- such grants only to be expended for the purposes for which they are provided;[3] (3) to issue, modify or revoke orders prohibiting or abating the discharge of waste and requiring the construction of new disposal systems;[4] (4) approve or deny plans for the construction of disposal systems and inspect the construction of such disposal systems;[5] (5) to act as the state water pollution control agency for all purposes of the federal Water Pollution Control Act;[6] (6) and establish and review classification of waters, water quality standards and effluent standards.[7]

There are two entities which may render waste treatment services (i.e., management agencies): municipalities and sewer districts.[8]

Sewer districts are created by ordinance of the governing body of a municipality and may include areas lying outside such municipality.[9]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

As was noted in paragraph 1.1, two treatment agencies will be

considered throughout this report: sewer districts and municipalities.

2.1 Authority Directly or By Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Both municipalities and sewer districts are authorized to construct, operate and maintain sewage treatment works.[10]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Neither treatment agency is specifically authorized to receive grants from the federal government. On the other hand, the Department of Health is so authorized, and since the grants which it receives must be used for the purposes for which they were given, the Department should be able to insure that federal funds will be properly channeled to the treatment agency.[11]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

As will be noted below, both agencies have charging authority.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency. [§204(b)(1)(A)].

Sewer districts and municipalities are authorized to charge users for services provided.[12] Such broad charging authority, not limited by any specified charging basis, should permit both agencies to comply with this paragraph.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

Neither sewer districts nor municipalities are specifically authorized to charge to the extent necessary to pay non-bond financed (federal portion) construction costs. Both agencies could, however, contract with industry to assure recovery of

such costs. Also as will be noted in paragraph 2.4.3, both agencies may assess taxes to pay for construction costs. Since the basis for such taxes is not the cost of the "treatment works reasonably attributable to [each industry's] wastes," it is doubtful that this taxing authority satisfies the requirements of paragraph 2.3.2.

2.4 Authority to Incur Short- and Long-Term Indebtedness. [§208(c)(2)(F)].

Both treatment agencies have bonding authority.

2.4.1 General Obligation Funding.

Upon a majority vote of qualified electors voting in a municipal special election, a municipality may issue general obligation bonds to an amount not exceeding four percent of the assessed value of taxable property therein.[13] Such bonds have a maximum maturity period of 20 years.[14]

Sewer districts have no authority to issue general obligation bonds, but do have authority to issue revenue bonds as noted in paragraph 2.4.2.

2.4.2 Special Funds and Revenue Funding.

Sewer districts may issue revenue bonds.[15] No maximum maturity period is specified for such bonds.

A municipality may finance up to 60 percent of construction costs through revenue bonds.[16] Such bonds are secured not only by the net revenue of the system, but also by a mortgage on the system.[17] No maximum maturity period is specified for such bonds. If a municipality wishes to finance more than 60 percent through revenue bonds, it must form a sewer district, which, as noted above, can issue the necessary amount of revenue bonds.[18]

2.4.3 Other Methods of Financing.

Municipalities may defray the cost of a sewage system out of the general current tax revenues on hand and appropriated for that purpose.[19]

Sewer districts may provide for the payment of one-fifth of the construction costs through special assessments upon property owners residing in the district.[20]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

There are no specific provisions which assure that each community will pay its proportionate share of the costs. As was noted in paragraph 2.3.1, however, municipalities and sewer districts should be able to assure that each individual user pays his proportionate share and this, in turn, should satisfy this paragraph's requirements.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Neither of the agencies under consideration may refuse a noncomplying municipality's waste.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Neither of the treatment agencies possess moratorium powers. As of July 1, 1973, the Department of Health has discharge permit issuing authority which will provide it with substantial moratorium powers.[21]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

Neither of the treatment agencies are specifically authorized to impose penalties and surcharges on noncomplying municipalities, but the Department of Health is so authorized.[22]

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Both agencies are authorized to treat industrial wastes.[23] Municipalities are empowered to make "all necessary rules and regulations governing the use, operation, and control" of sewage systems.[24] This may provide municipalities with sufficient authorization to require industry to pretreat their waste.

Sewer districts have no such authority, nor are they expressly authorized to enter into contracts with industry, but the Board of Health could require pretreatment.[25]

3.0 SUMMARY

With amendments effective July 1, 1973, North Dakota and its management agencies are expressly authorized with the legal capacity to comply with nearly all requirements of the Act. The only deficiencies appear to be that treatment agencies lack certain powers, but for the most part these deficiencies can be overcome by action of the Board of Health.

3.1 Deficiencies

Under the present statutes in North Dakota, the following deficiencies exist as to the treatment agencies only:

1. Neither treatment agency is specifically authorized to receive federal grants.

2. Neither agency is expressly authorized to recoup the federal portion of construction costs through service charges.

3. Neither agency possesses moratorium powers or lesser powers connected with this point.

4. Sewer districts have no apparent method for requiring industry to pretreat their waste.

4.0 BIBLIOGRAPHY

1. Ayers and Beck, Water Management Districts in North Dakota, 48 N.D. L. Rev. 361.

2. Water Quality Standards for Surface Waters in North Dakota (Issued by Department of Health, 1970). (This reference contains an extensive bibliography.)

FOOTNOTES

1. N.D. Code §61-28-01 et seq.
2. N.D. Code §61-28-04(2).
3. N.D. Code §61-28-04(4).
4. N.D. Code §61-28-04(7).
5. N.D. Code §61-28-04(9).
6. N.D. Code §61-28-04(12).

7. N.D. Code §61-28-04(14)-(17).
8. N.D. Code §§40-22-01(municipalities) and 40-22-08(sewer districts).
9. N.D. Code §40-22-09.
10. N.D. Code §40-34-01 and §40-22-01, -08, respectively.
11. N.D. Code §61-28-04(4).
12. N.D. Code §§40-22-16, -34-05, respectively.
13. N.D. Code §21-03-04(3).
14. N.D. Code §21-03-08.
15. N.D. Code §40-24-19.
16. N.D. Code §40-34-02.
17. N.D. Code §40-34-02.
18. N.D. Code §40-34-02.
19. N.D. Code §40-34-02.
20. N.D. Code §40-24-10.
21. N.D. Code §61-28-04(18) and (19).
22. N.D. Code §§61-28-06 and 07.
23. N.D. Code §§40-22-01, -08(sewer districts); 40-34-05 (municipalities).
24. N.D. Code §40-34-05.
25. N.D. Code §61-28-04(23).

(Note: References to §§61-28-04, 06 and 07 were taken from a copy of Senate Bill No. 2168, effective July 1, 1973, which copy was furnished by North Dakota State Department of Health.)

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

SOUTH DAKOTA REPORT
(1973)

1.0 OVERVIEW

1.1 Description of Existing Agencies

South Dakota enacted new legislation in the early part of 1973, revising the existing laws concerning water pollution. The new administering agency for water pollution control is the Water Pollution Control Commission.[1]

The Commission has authority to set standards of water quality, classify all waters of the state, formulate effluent standards according to the Federal Water Pollution Control Act, regulate and control permits to discharge sewage or industrial wastes, enforce water pollution control laws by court actions and regulate state grants of funds.[2]

The Director of the Division of Sanitary Engineering and Environmental Protection administers the new act. This director has powers to control permit issuances, issue clean-up orders, enter and inspect any premises and require operators of point sources to maintain records, prepare reports, install monitoring equipment and sample effluents.[3]

It is further provided that it is illegal to cause water pollution or discharge wastes which lower water quality levels.[4] Permits are required to operate or construct disposal systems, increase the volume or strength of discharges, construct or operate any industrial establishments which would cause water quality levels to decrease, and to construct or use any new outlets for discharging wastes.[5]

Strict measures are set forth to enforce the new legislation. First-time violators can be fined $25,000 per day or receive one year in jail, or both.[6] Fines for subsequent convictions can reach $50,000 per day.[7] Civil penalties of up to $10,000 per day can also be imposed[8] as can injunctions.[9]

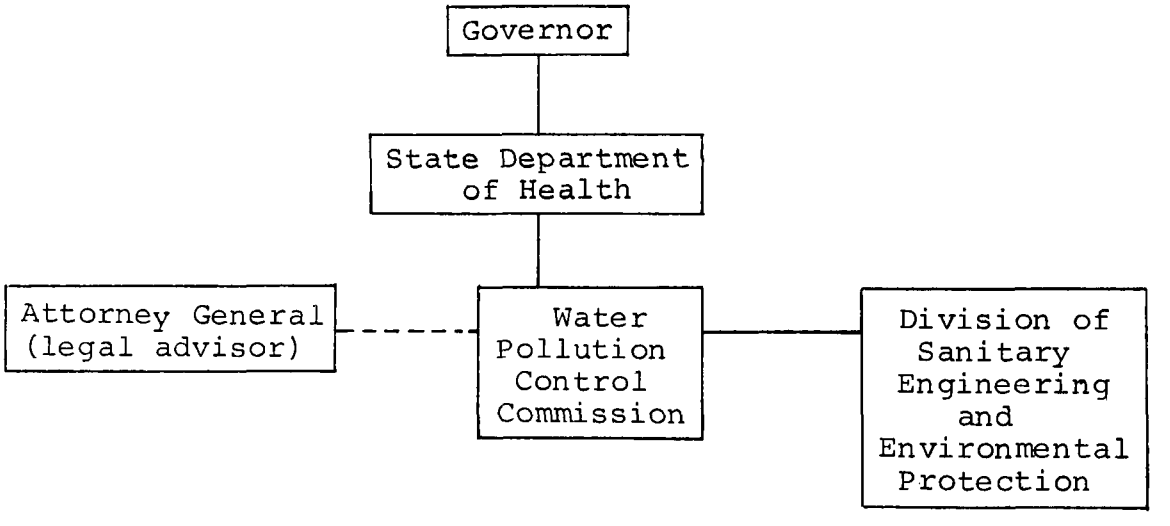
New legislation also provides for a program of state grants to local governments for the purpose of aiding water pollution control projects construction.[10]

It should be noted that new legislation also sets up areawide waste treatment management agencies and gives these agencies the express powers required by §208(c)(2).[11]

There are two entities which may now render waste treatment services (i.e., management agencies); municipalities and sanitary districts.[12] Upon petition by one-third of the eligible voters residing within a proposed sanitary district, the question of the district's creation is submitted to the electors of the district.[13] If a majority of the votes cast so approve, the sanitary district is created.[14] A sanitary district may not include any municipality.[15]

Since the proposed new waste treatment management agencies will probably incorporate existing municipal and sanitary district facilities, this report will assume that the powers granted the new agencies also apply to existing agencies.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

As was noted in paragraph 1.1, two treatment agencies will be considered throughout this report: municipalities and sanitary districts.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Both municipalities and sanitary districts are authorized to construct, operate and maintain sewer treatment works either directly, or by contract.[16]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All local agencies are specifically authorized to receive grants or other funds from the federal government or other sources.[17]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All management agencies possess this exact authority.[18]

2.3.1 Each Category of User Will Pay its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

When assessing waste treatment charges, municipalities are required to take into consideration the quantity and concentration or strength of waste treated.[19] Such charges must be used to pay, among other things, operation and maintenance of sanitary facilities.[20] Municipalities seem to satisfy the requirements of this paragraph.

Sanitary districts are required to charge an amount adequate to pay operation and maintenance costs and principal and interest on revenue bonds.[21] No charging basis is provided. No election is required for such charges to be assessed.[22] The broad charging authority, not limited by any specified charging basis, should permit compliance with this paragraph by sanitary districts, especially in light of the precise authority granted the new agencies by the new legislation.

2.3.2 Full Recovery Will be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

As noted in paragraph 2.3.1, sanitary districts are obligated to

charge to the extent necessary to cover operation and maintenance costs and principal and interest on revenue bonds; non-bond financed construction costs (i.e., the federal portion) are not mentioned. It would, therefore, appear that sanitary districts are not able to meet the requirements of this paragraph.

On the other hand, municipalities are specifically authorized to pay construction costs out of its service charges.[23] This should enable municipalities to meet this provision.

The new South Dakota legislation does not expressly provide for the recovery of the capital costs of construction from industries.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Express authority exists for all agencies to incur short- and long-term indebtedness.[24] As will be noted below, both treatment agencies are authorized to issue revenue bonds.

2.4.1 General Obligation Funding.

Neither agency under consideration may issue general obligation bonds.

2.4.2 Special Funds and Revenue Funding.

Sanitary districts and municipalities may, by ordinance, issue revenue bonds.[25] Before their issuance, however, such bonds must either be petitioned for by a majority of eligible voters residing within the agency's jurisdiction or be approved by sixty percent of such voters in a regular or special election.[26] No maximum maturity period is specified.

2.4.3 Other Methods of Financing.

Municipalities are authorized to assess taxes to finance the construction of sewer treatment plants and various types of sewer lines.[27] Sanitary districts may assess taxes for corporate purposes.[28]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

The new treatment agencies have this express authority to charge communities proportionately.[29] It is, therefore, assumed that existing agencies also have this authority.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

The new treatment agencies are specifically authorized to refuse municipal wastes.[30] Therefore, municipal systems and sanitary districts which are incorporated into the new agencies would reasonably seem to have this authority.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

The authority noted in paragraph 2.6 should enable the treatment agencies to place reasonable conditions on the furnishing of its services. One such condition might be the denial of additional hook-ups.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

The same power noted in paragraph 2.6 would also enable agencies to impose penalties and surcharges for breach of contract provisions.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

There is express authority for new treatment agencies to accept for treatment industrial wastes.[31] This authority is broad enough to include the requirement of pretreatment.

3.0 SUMMARY

This report has noted the new legislation enacted in South Dakota. This legislation was apparently drafted to bring the state into compliance with the Federal Water Pollution Control Act Amendments of 1972. As a result, South Dakota has express statutory authority to meet virtually all provisions of the Act.

3.1 Deficiencies

The only deficient area of statutory law concerns paragraph 2.3.2.

No express authority exists for sanitary districts or the new agencies to recover the capital costs of construction, although municipalities do possess this power. However, the necessary authority might reasonably be implied from the broad charging powers of the agencies. Enactment of new legislation giving express powers in this area would bring South Dakota into complete compliance with the Act in regards to areawide waste treatment management agencies.

4.0 BIBLIOGRAPHY

1. Matthew, Floyd, Practical Comment: A Lawyer's Pollution Primer, 16 So. Dak. L. Rev. 309 (1971).

2. Munro, James, South Dakota and the Water Impasse, 11 So. Dak. L. Rev. 255 (1966).

3. Note, Watson v. Great Lakes Pipeline Company - A Public Nuisance Approach to Water Pollution, 16 So. Dak. L. Rev. 510 (1971).

FOOTNOTES

1. As of July, 1973 the new legislation had not been given section numbers or published. This report will refer to the legislation by its bill number as furnished by the South Dakota Department of Health. The act establishing the Water Pollution Control Commission is HB 819 §3. Note that if executive order 73-1 becomes law, the Board of Environmental Protection shall succeed the Commission's power. H.B. 819 §7.
2. H.B. 819 §4.
3. H.B. 819 §6.
4. H.B. 819 §8.
5. Id.
6. H.B. 819 §14.
7. Id.
8. Id.
9. H.B. 819 §15.
10. H.B. 643 §1.
11. H.B. 819 §18.
12. S.D. Comp. Laws Ann. §§ 34-17-1 et seq. (1972 Revision), 9-48-1 et seq. (1967).
13. S.D. Comp. Laws Ann. §§ 34-17-1, 34-17-7.
14. S.D. Comp. Laws Ann. § 34-17-11.
15. S.D. Comp. Laws Ann. § 34-17-1.

16. H.B. 819 §18(3)(c).
17. H.B. 819 §18(3)(d).
18. H.B. 819 §18(3)(e).
19. S.D. Comp. Laws Ann. §9-48-27.
20. S.D. Comp. Laws Ann. §9-48-29.
21. S.D. Comp. Laws Ann. §34-17-30.
22. S.D. Comp. Laws Ann. §34-17-32.
23. S.D. Comp. Laws Ann. §9-48-29.
24. H.B. 819 §18(3)(f).
25. S.D. Comp. Laws Ann. §§9-50-7, 34-17-30.
26. Id.
27. S.D. Comp. Laws Ann. §9-48-8 (service sewers); 9-48-13 (main, trunk and storm sewers); 9-48-52 (sewage treatment plants).
28. S.D. Comp. Laws Ann. §§34-17-26, 34-17-33.
29. H.B. 819 §18(3)(g).
30. H.B. 819 §18(3)(h).
31. H.B. 819 §18(3)(i).

UTAH REPORT
(1973)

1.0 OVERVIEW

1.1 Description of Existing Agencies

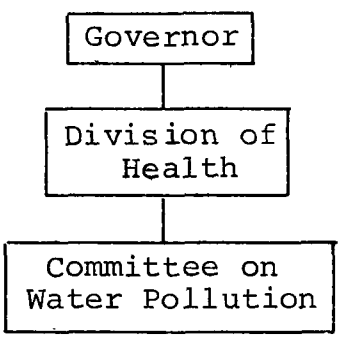
The State Water Pollution Control Committee is the administering agency for Utah's water pollution control laws.[1]

Some of the duties and powers of the committee are the following: (1) to develop programs for pollution control and abatement;[2] (2) to accept and administer grants from the federal government;[3] (3) to adopt and enforce water quality standards;[4] (4) to adopt and enforce rules and regulations;[5] (5) to issue orders prohibiting or abating waste discharge and requiring the construction of new treatment works;[6] and (6) to issue or deny permits which are required before waste may be discharged into state waters or treatment works may be constructed or modified.[7]

There are two entities which may render waste treatment services (i.e., management agencies): municipalities[8] and Improvement Districts[9] [hereinafter referred to as ID's].

ID's are created by resolution of the board or boards of county commissioners for all counties lying wholly or partly within the proposed district.[10] If the resolution is subsequently opposed by 25 percent of real property owners residing within the district, the district cannot be established.[11]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

As was noted in paragraph 1.1, two treatment management agencies will be considered throughout this report: municipalities and ID's.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Both municipalities and ID's are authorized to construct, operate and maintain sewer treatment works.[12]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Both municipalities and ID's are specifically authorized to receive federal grants.[13]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Both management agencies have charging authority.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Both municipalities and ID's may charge for the use of their facilities and services to the extent necessary to pay for, among other things, operation and maintenance costs.[14] Such an unqualified authorization should permit compliance with the provisions of this provision of the act, although in neither case is a charging basis specifically provided.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

ID's are authorized to charge for its services to the extent necessary to pay for operation and maintenance expenses and

principal and interest on issued bonds.[15] It would therefore appear the ID's have no express authority to recoup the federal (nonbond financed) portion of construction costs.

On the other hand, municipalities are specifically authorized to "defray the cost of construction, reconstruction, maintenance or operation of any. . .sewage treatment plant" through service charges.[16] Accordingly, municipalities are authorized to recoup construction costs through charges.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Both treatment agencies under consideration have bonding authority.

2.4.1 General Obligation Funding.

ID's are authorized to issue general obligation bonds having a maximum maturity period of forty years.[17] Such an issuance must first be approved by a majority of electors voting in a special election.[18] Such bonds may not cause the ID's outstanding debt to exceed 12 percent of the assessed value of taxable property in the district.[19] The full faith, credit and resources of the district are pledged to the payment of principal and interest on the due dates.[20]

Municipalities are also authorized to issue general obligation bonds having a maximum maturity period of forty years.[21] Cities of the first and second class (having populations greater than 100,000 and less than 100,000 but greater than 60,000 respectively)[22] may not issue any such bonds if, by so doing, they would cause their aggregate indebtedness to exceed eight percent of the value of the taxable property therein.[23] The debt ceiling for cities of the third class (having populations between 800 and 60,000)[24] and towns (population less than 800)[25] is twelve percent.[26]

2.4.2 Special Funds and Revenue Funding.

Municipalities have no authority to issue revenue bonds for the purpose of financing sewer treatment works construction.

ID's are authorized to issue revenue bonds in the same manner as they issue general obligation bonds.[27] However, the debt limitations, noted in paragraph 2.4.1, do not apply to revenue bonds and the full faith and credit of the district is not pledged to the payment and interest on revenue bonds.[28] The maximum maturity period of forty years also applies to revenue bonds.[29]

2.4.3 Other Methods of Financing.

Municipalities may assess an annual tax in order to finance the construction of sewer facilities and pay the principal and interest on general obligation bonds issued to finance sewer facility construction.[30]

ID's are authorized to impose an annual tax "for district purposes."[31]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

There are no specific provisions which assure that each community will pay its proportionate share of the costs. As was noted in paragraph 2.3.1, however, municipalities and ID's should be able to assure that each user will pay his proportionate share and this, in turn, may satisfy this paragraph's requirements.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Neither of the agencies under consideration may refuse a noncomplying municipality's waste.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Neither of the treatment agencies possesses "moratorium powers." However, the State Water Pollution Control Committee may deny a waste discharge permit if, by granting the permit, water quality standards would be violated.[32] This power to deny permits should give the committee substantial "moratorium powers."

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

Neither of the treatment agencies are expressly authorized to impose penalties or surcharges on noncomplying municipalities.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

ID's are specifically authorized to contract with firms and corporations for the furnishing of waste treatment services.[33] The ability to contract should enable ID's to place conditions on their services such as requiring pretreatment of certain industrial wastes.

Municipalities are not specifically authorized to receive industrial wastes. While this authorization might reasonably be implied from the fact the class of "users" is not specifically limited to "natural" persons, it is doubtful whether municipalities can place conditions (such as pretreatment) on the furnishing of its services because of their apparent inability to contract with industries for treatment services.

ID's and the State Water Pollution Control Committee are specifically authorized to investigate sewage discharges from private and public property.[34] Additionally, the Committee is empowered to require the maintenance of reasonable records relating to the operation of disposal systems and may require submission of copies of such records.[35] No provision states how the ID's or Committee are to treat confidential material (or whether such material even has to be disclosed).

3.0 SUMMARY

Utah can comply with most of the requirements of the Act. The enactment of new legislation would cure the deficiencies described in paragraph 3.1, or at least eliminate the necessity of implying these specific powers from some general powers.

3.1 Deficiencies

Under the present statutory set-up in Utah, the following deficiencies exist:

(1) ID's are not able to recoup the federal portion of construction costs through services charges (2.3.2);

(2) neither agency is authorized to refuse municipal waste, nor do they possess lesser powers on this point (2.6 and 2.6.2); and

(3) municipalities have no apparent authority to require pretreatment of industrial wastes (2.7).

4.0 BIBLIOGRAPHY

None.

FOOTNOTES

1. Utah Code §73-14-1 et seq. (1968).
2. Utah Code §73-14-4(a) (1968).
3. Utah Code §73-14-4(c) (1968).
4. Utah Code §73-14-4(f) (Supp. 1973).
5. Utah Code §73-14-4(g) (Supp. 1973).
6. Utah Code §73-14-4(h) (Supp. 1973).
7. Utah Code §73-14-4(j) (1968).
8. Utah Code §10-7-4 et seq. (1973).
9. Utah Code §17-6-1 et seq. (1973).
10. Utah Code §17-6-2 (1973).
11. Utah Code §17-6-3 (1973).
12. Utah Code §§10-8-38, 17-6-1(1), respectively (1973).
13. Utah Code §55-3-30 (1963).
14. Utah Code §§10-8-38, 17-6-3.6, respectively (1973).
15. Utah Code §17-6-3.6 (1973).
16. Utah Code §10-8-38 (1973).
17. Utah Code §17-6-3.5 (1973).
18. Id.
19. Id.
20. Id.
21. Utah Code §10-7-9.
22. Utah Code §10-1-1 (1973).
23. Utah Code §10-7-7 (1973).
24. Utah Code §10-1-1 (1973).
25. Id.
26. Utah Code §10-7-7 (1973).
27. Utah Code §17-6-3.5 (1973).
28. Id.
29. Id.
30. Utah Code §10-7-14.2 (1973).
31. Utah Code §17-6-3.4 (1973).
32. Utah Code §§73-14-5, -6 (1968).
33. Utah Code §17-6-22 (1973).
34. Utah Code §§10-7-13 (1973), 73-14-9 (1968).
35. Utah Code §73-14-9 (1968).

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT

WYOMING REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

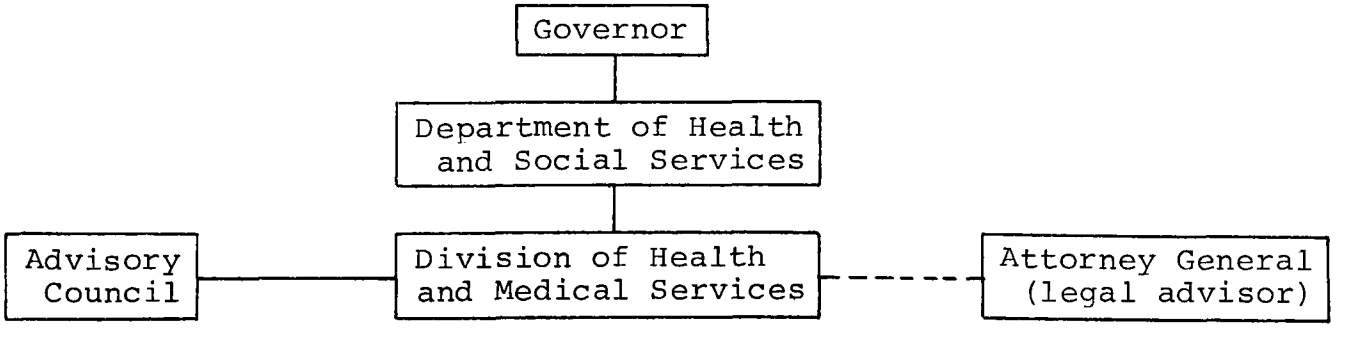
In 1969, the powers, duties and regulatory authority of the Board of Health were transferred to the Department of Health and Social Services (Department).[1] The Department through its Coordinator and Administrator administer Wyoming's water pollution control laws. Some of its duties and powers are: (1) to approve or disapprove sewage disposal system plans which all cities, towns, corporations, companies or persons are required to submit;[2] (2) to issue pollution abatement orders;[3] and (3) inspect private and public establishment for conditions which may relate to pollution of state waters.[4]

The governing bodies of cities or towns and sanitary districts are the two agencies which are authorized to render waste treatment management services.

Upon the petition of ten percent of the eligible voters residing within the proposed district the question of a district's creation is voted upon in a special election.[5] The approval of a majority of the votes cast is required for the district's creation.[6]

1.2 Schematic Diagram of Existing Agencies

WYOMING WATER POLLUTION CONTROL ADMINISTRATION



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

As was noted earlier, two treatment agencies will be considered in this report: the governing bodies of cities or towns (hereinafter referred to as municipalities) and sanitary districts.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Municipalities and sanitary districts are authorized to construct, operate and maintain sewer treatment plants.[7]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Municipalities may "apply for and accept...grants...from the United States of America or any agency or instrumentality thereof under any federal law to aid in the prevention and abatement of water pollution."[8] Sanitary districts have no specific authorization to receive grants.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

As will be noted below, both treatment agencies under consideration have charging authority.

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Sanitary districts are given very broad charging authority. It may assess "just and equitable...charges...for...the use of the...disposal plant."[9] Such authority, unqualified by any specified limitations, should enable districts to comply with this paragraph.

Municipalities must collect "a charge from the users of the system at a rate sufficient to pay (among others) the cost of operating and maintaining the system."[10] No charging

basis is specifically provided for. It therefore appears that municipalities are also given sufficiently broad charging powers to permit compliance with this paragraph.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

As noted in the previous paragraph, sanitary districts are given very broad charging powers. Accordingly, it would appear that districts can charge to the extent necessary to pay back the "federal portion."

On the other hand, municipalities are required to charge a sufficient amount to pay operation and maintenance costs and principal and interest on bonds.[11] The federal (non-bond financed) portion is not required to be covered by the charges. It could be argued, however, that while municipalities are required to cover certain specified expenses, it may, nevertheless, voluntarily charge to the extent necessary to cover other expenses (such as the "federal portion").

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

As will be noted below, both agencies have bonding authority.

2.4.1 General Obligation Funding.

Sanitary districts may petition the district court of the county in which the lands of the district, or the greater portion thereof, are situated, for the issuance of general obligation bonds.[12] The court has the power to examine and determine the legality and confirm or disaffirm the issuance of such bonds.[13] Additionally, if forty percent or more of the electors of the district file objections to such bonds within twenty days of the first notice of the proposed bond issuance, the question of such issuance must be submitted to the district's electors in a special election.[14] The proposal must be approved by a majority of electors voting on the issue.[15] The principal amount of such general obligation bonds may not exceed ten percent of the assessed value of the taxable property in the district.[16] No limit on the maturity period of such bonds is specified.

Municipalities are authorized to issue general obligation bonds for sewer system purposes as part of their power to make public improvements.[17]

2.4.2 Special Funds and Revenue Funding.

Sanitary districts may also issue revenue bonds.[18] The procedure outlined in paragraph 2.4.1 for the issuance of general obligation bonds also applies to revenue bonds. However, there is no limit on the principal amount of revenue bonds.[19] Again, no limit on the maturity period of such bonds is provided.

Municipalities may, by ordinance, issue revenue bonds.[20] No prior approval, through a special election or otherwise, is required for such an issuance.[21] The maximum maturity period of such bonds is 40 years.[22]

2.4.3 Other Methods of Financing.

Sanitary districts may levy and collect annual taxes to be used for district "purposes."[23] Municipalities do not possess a similar power.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

There are no specific provisions which insure that each community will pay its proportionate share of the costs. As was noted in paragraph 2.3.1, however, municipalities and sanitary districts can very likely assure that each individual user will pay his proportionate share and this, in turn, may satisfy this paragraph's requirements.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Neither of the treatment agencies are authorized to refuse municipal waste.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

While neither treatment agency possesses "moratorium powers" the approval of the Department is required before any

municipality may build or install any sewage system.[24] The conditions which would justify the withholding of approval are not statutorily provided for, however.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Neither of the treatment agencies are authorized to impose penalties and surcharges against noncomplying municipalities.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Both treatment agencies are specifically authorized to receive industrial wastes.[25] Additionally, both agencies are specifically authorized to enter into contracts with industries for the disposal of such wastes.[26] The contractual power should enable the agencies to place conditions (e.g., pretreatment of industrial wastes) on the furnishing of waste treatment services.

The Department is authorized to conduct investigations on public and private property.[27] No provision states how confidential material are to be treated. Neither treatment agency is so authorized.

3.0 SUMMARY

Except as noted in paragraph 3.1, Wyoming can meet the requirements of the Act particularly if some functions required to be performed in the area subject to an areawide plan are delegated to existing state level agencies.

3.1 Deficiencies

1. Sanitary districts are not authorized to receive grants.

2. Municipalities' authority to charge for non-bond financed construction costs should be made more explicit.

3. The procedural requirements prior to a bond issuance by a sanitary district might be simplified.

4. Neither, treatment agency possesses the power to refuse municipal wastes, nor do they have lesser powers on this point.

4.0 BIBLIOGRAPHY

1. Williamson, Arthur E., Water Quality Control From a State Viewpoint, V Natural Resources Lawyer 230 (1972).

FOOTNOTES

1. Wyo. Stat. §9-160.2 (1971). See Wyo. Stat. §§35-184 et seq. for such powers and duties formerly exercised by the Board of Health.
2. Wyo. Stat. §35-187.
3. Wyo. Stat. §35-190.
4. Wyo. Stat. §35-191.
5. Wyo. Stat. §§35-141,-144.
6. Wyo. Stat. §35-144.
7. Wyo. Stat. §§15.1-456, 35-148.
8. Wyo. Stat. §15.1-456.
9. Wyo. Stat. §35-163.
10. Wyo. Stat. §15.1-460.
11. Wyo. Stat. §15.1-460.
12. Wyo. Stat. §35-158.
13. Wyo. Stat. §35-161.
14. Wyo. Stat. §35-162.
15. Wyo. Stat. §35-162.
16. Wyo. Stat. §35-156.
17. Wyo. Stat. §15.1-410 et seq.
18. Wyo. Stat. §35-156.
19. Wyo. Stat. §35-156.
20. Wyo. Stat. §15.1-457.
21. Wyo. Stat. §15.1-456.
22. Wyo. Stat. §15.1-456(a).
23. Wyo. Stat. §35-150.
24. Wyo. Stat. §35-187.
25. Wyo. Stat. sanitary districts -§35-148; municipalities - §15.1-455.
26. Wyo. Stat. sanitary districts -§35-148; municipalities - §15.1-456(c).
27. Wyo. Stat. §35-191.

REGION IX

PLEASE REFER TO FORMAT
BEFORE READING THIS REPORT.

ARIZONA REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Arizona's primary agency for water pollution control is the State Department of Health. Its functions in protecting the quality of Arizona's waters include:

1. issuance of permits for discharge of wastes into state waters, and for operation or modification of disposal systems;[1]

2. issuance, modification, or revocation of orders prohibiting or abating waste discharges, requiring construction or modification of waste treatment facilities, or requiring other remedial measures;[2]

3. approval of all plans for construction or modification of disposal facilities;[3]

4. development of comprehensive programs for water pollution control and participation in studies, investigations, and demonstrations relating to water pollution control;[4]

5. entry upon and inspection of public or private property to investigate known or suspected sources of pollution, may require maintenance of records relating to the operation of disposal systems.[5]

6. cooperation with other state agencies, the federal government, and other states or water pollution control;[6]

7. service as state water pollution control agency for purposes of the Federal Water Pollution Control Act. The Department is authorized to take all steps necessary to secure for Arizona the benefits of the Act, to administer and accept grants, and to certify, when requested costs and expenditures for water pollution control facilities.[7]

Within the Department is the Board of Health. Its primary function is to adopt rules and regulations effectuating the

powers and duties of the Department to control water pollution.[8] Also within the Department is the Water Quality Control Council. Its functions include:

1. adoption of a comprehensive program for prevention, control, and abatement of water pollution;

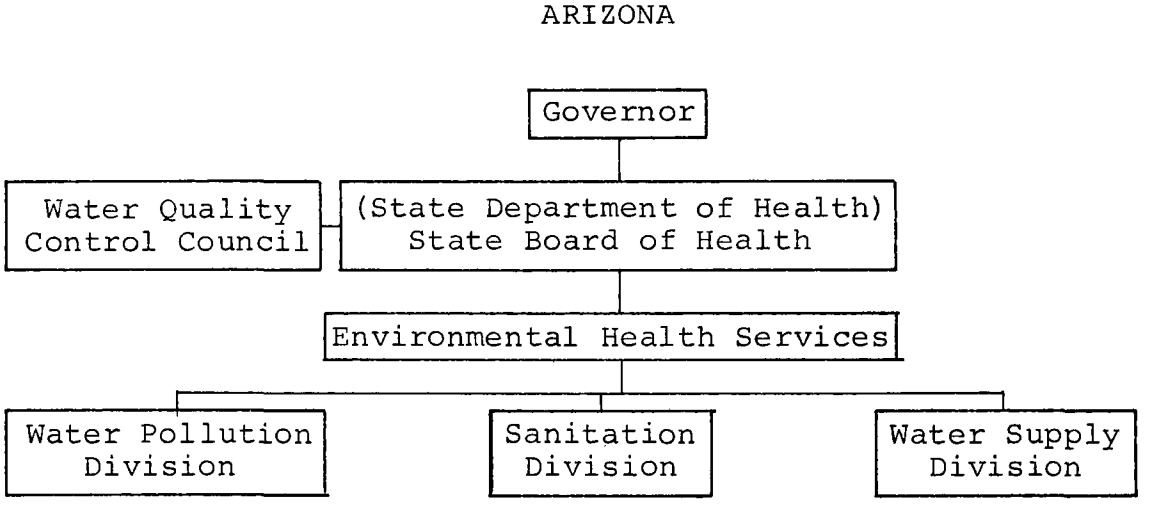
2. adoption, administration, and enforcement of water quality standards and issuance of rules and regulations pertaining to such standards;

3. determination of priority for grant applications.[9]

Other state level agencies exercise functions relative to water quality. The State Land Department exercises general control and supervision over the appropriation and distribution of the waters of the state.[10] The Arizona Water Commission is responsible for development and management of the state's water resources.[11] The Arizona Game and Fish Commission is authorized to institute local actions for discharges harmful to fish or wildlife.[12]

Waste treatment is a local function in Arizona. Therefore, this report will be limited to those units of local government authorized to own and operate waste water treatment systems.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

This analysis covers towns, cities, sanitary districts, and pollution control corporations, which constitute all of Arizona's waste water treatment agencies. The capacity of each agency is considered with respect to each of the grant eligibility requirements discussed below.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Arizona's waste water treatment agencies are authorized to construct, (directly or by contract), operate and maintain waste treatment facilities.[13] However, pollution control corporations' power to operate such facilities is limited to operation in the capacity of a lessor.[14]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

All of Arizona's waste water treatment agencies possess sufficient authority to comply with this requirement.[15]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Arizona's cities and towns are authorized to collect user charges for waste water treatment services and to levy both property taxes and special assessments.[16] County sanitary districts may charge and collect sewer service charges and levy an annual property tax.[17] Pollution control corporations may collect rents from leased facilities.[18]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

In addition to their authority, discussed above, to assess user charges, Arizona's towns and cities are authorized to perform such acts as are necessary and proper for the full exercise of their powers.[19]

These two grants of authority should be sufficient to allow them to base their user charges on the character, volume and flow of effluent treated. Therefore, they have authority to structure their charge schedules to assure that each category of user, residential, commercial, or industrial, will pay its appropriate share of the costs of operation and maintenance of waste water treatment facilities. The same analysis is applicable to county sanitary districts, which are authorized to formulate and adopt rules and regulations governing the operation and utilization of their plants.[20] Pollution control corporations are empowered to do such acts as are necessary and appropriate to carrying out their purposes.[21] However, while this authority would allow them to frame their facility leases to comply with the charge requirements of the act, renegotiation of current leases might be necessary to bring compliance with such requirements.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no specific legislation authorizing Arizona's waste water treatment agencies to recover such capital costs solely from industrial dischargers. To the extent that such recovery is required under the terms of a federal grant, it is a cost which agencies may recover. Though only one class of user will be subject to such cost recovery, the classification appears reasonable in that it avoids use of public funds to decrease private costs of industrial dischargers. Specific legislation would be advisable, however, to explicitly authorize such an element of agency charges to industrial dischargers.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Subject to the terms and limitations discussed in the following sections, Arizona's waste water treatment agencies have authority to incur long-term indebtedness. Though none of them has specific legislative authority to incur short-term indebtedness, their authority to incur long-term debt and power to contract are broad enough to encompass incurring short-term indebtedness.[22]

2.4.1 General Obligation Funding.

Pollution control corporations are not authorized to issue

general obligation bonds. Sanitary districts may issue general obligation bonds without a limitation on amount when authorized by a majority of the electorate voting on the matter.[23]

2.4.2 Special Funds and Revenue Funding.

Cities, towns and pollution control corporations may issue revenue bonds with no limit on amount when authorized by a majority of the electorate voting on the matter, but in the case of pollution control corporations approval by the directors and governing body of the corporation is sufficient.[24]

2.4.3 Other Methods of Financing.

Cities and towns may issue assessment bonds for local improvements.[25] Revenue bonds of pollution corporations may be additionally secured by mortgages covering properties of the corporation.[26]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

Sanitary districts may construct, operate and maintain waste water treatment facilities jointly with other districts, municipalities or government agencies.[27] In any such joint venture, the contractual apportionment of treatment costs will be acceptible for grant purposes as representing the proportionate share of treatment costs attributable to each community receiving services from the jointly operated facility. Therefore, in such cases the agreement will assure that each participating community will pay its proportionate share of treatment costs. Pollution control corporations can comply with this grant requirement by drafting their facility leases so as to assure that recipients of services from the facility will pay their proportionate share of treatment costs. Cities and towns, through the terms of their authority to asssss user charges,[28] impliedly have sufficient authority to comply with this requirement.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of Arizona's waste water treatment agencies have specific authority to "cut off" service to municipalities or subdivisions

being served by their facilities.[29] Further, it is unlikely that such action would be judicially regarded as being within the scope of the agencies' necessarily implied powers. The authority, noted in section 1.1 above, of the State Board of Health to regulate waste discharges through the mechanism of discharge permits is essentially the power to refuse to receive wastes. Though this required power is possessed by a state regulatory agency rather than by a local management agency, the state minimally complies with this grant requirement.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Arizona's waste water treatment agencies are not required to connect their treatment facilities to communities or subdivisions outside their boundaries. With respect to such communities or subdivisions they can deny new "hook-ups." The power of the agencies to refuse to connect communities or subdivisions within their boundaries is much more limited.[30] Further, as the non-compliance involved in such cases will often be attributable to the agency itself, denying new "hook-ups" would not be a practical sanction.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

No sanctions exist which would be applicable to municipalities or subdivisions as the charge system and penalties for violation of ordinances were primarily designed to operate on individual violators. Additionally, where the violator is an unincorporated subdivision or community there is no single individual against which sanctions could be applied.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208 (c)(2)(I)].

The authority of Arizona's agencies to provide waste treatment services, discussed in section 2.1 above, is sufficient to permit them to treat industrial wastes. Requiring pretreatment of industrial wastes is within the agencies powers to the extent that pretreatment is necessary to protect the porper operation of their facilities. Absent such pretreatment the agencies would necessarily be empowered to refuse industrial wastes in order to execute their waste treatment function. This conclusion is stronger for county areas where industrial dischargers may be required to obtain local discharge permits.[31]

3.0 SUMMARY

Arizona's waste water treatment agencies are generally in compliance with the requirements of the Act. However, additional legislation would be advisable to clarify and strengthen their authority in certain areas.

3.1 Deficiencies

The agencies should be clearly authorized to recover from industrial waste dischargers the federal portion of the capital costs of new facilities attributable to treatment of their wastes. Sanctions should be provided for use against noncomplying communities. Specific authority should be provided allowing the agencies to require pretreatment, monitoring and reporting by industrial dischargers.

4.0 BIBLIOGRAPHY

1. Notes, 5 Ariz. L. Rev. 139 (1963).

2. Reed, Kenneth R., Economic Incentives for Pollution Abatement: Applying Theory to Practice, 12 Ariz. L. Rev. 511 (1970).

3. Mann, Dean E., The Politics of Water in Arizona, (1963).

FOOTNOTES

1. A.R.S. §36-1856(11) (Supp. 1972).
2. A.R.S. §36-1856(8).
3. A.R.S. §36-1856(10).
4. A.R.S. §§36-1856(4), 36-1856(5).
5. A.R.S. §36-1863.
6. A.R.S. §§36-1856(2), 36-1856(5).
7. A.R.S. §§36-1856(9), 36-1852, 36-1856(6).
8. A.R.S. §36-1855.
9. A.R.S. §§36-1854, 36-1857.
10. A.R.S. §45-102 (1956).
11. A.R.S. §45-506 (Supp. 1972).
12. A.R.S. §17-237.
13. Towns, A.R.S. §§9-521(4)(a), 9-522(A)(1), 9-240(25)(c) (1956); cities, A.R.S. §§9-521(4)(a), 9-522(A)(1); City of Scottsdale v. Municipal Court of Tempe, 90 Ariz. 393, 386 P.2d 637 (1962); sanitary districts, A.R.S. §§36-1310(1), 36-1317(A); pollution control corporations, A.R.S. §§9-1226 (A)(3), 9-1226(A)(3), 9-1226(A)(10), 9-1226(13) (Supp 1972).
14. A.R.S. §9-1226(B).
15. Cities and towns, A.R.S. §9-672(B)(3) (1956); pollution control corporations, A.R.S. §9-1281 (Supp. 1972).

16. A.R.S. §§9-240(26), 9-244, 35-458, 35-474, 9-601 et seq., 9-530.
17. A.R.S. §§36-1326, 36-1324, 36-1325.
18. A.R.S. §9-1226(A)(5).
19. Cities and towns, A.R.S. §§9-240(22), 9-240(28)(a), 9-240(29).
20. A.R.S. §36-1310(12).
21. A.R.S. §9-1226(A).
22. Cities and towns, A.R.S. §§9-522(A)(2), 9-512, 9-812; sanitary districts, A.R.S. §§36-1320(a), 36-1317(A); pollution control corporations, A.R.S. §§9-1261(A)(1), 9-1261(A), 9-1226(A)(10).
23. A.R.S. §1320(A).
24. Cities and towns, A.R.S. §§9-522(A), 9-523, 9-537; Guthrie v. City of Mesa (1936), 47 Ariz. 336, 56 P. 2d 655; Crandall v. City of Safford (1936) 47 Ariz. 402, 56 P. 2d 660; pollution control corporations, A.R.S. §§9-1226(A), 9-1226(B), 9-1262.
25. A.R.S. §§9-694 et seq.
26. A.R.S. §9-1262.
27. A.R.S. §36-1310(4).
28. A.R.S. §§9-530.
29. Sanitary districts may have certain connections abated as nuisance if they were made in violation of district rules regulating connections. A.R.S. §36-1328. This power is too narrow to comply with grant requirements. The rule violation which would bring this provision into play would not necessarily violate a provision of an areawide plan, and most non-compliances with such a plan would not permit the district to disconnect.
30. The zoning power of cities and towns, A.R.S. §9-461(B) gives them considerable control over construction in and around their territories, but once structures are completed, their power to refuse connection is limited.
31. A.R.S. §36-1310(11).

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CALIFORNIA REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies.

On the state-wide and regional level, water quality planning and control in California is primarily the responsibility of subdivisions of the State Resources Agency. The Resources Agency exercises the administrative supervision over the operations of agencies within it and serves as the principal communication link between those agencies and the Governor.[1]

The State Water Resources Control Board, administratively located within the Resources Agency is charged with statewide water quality planning and control. Its responsibilities include formulation and adoption of statewide policy for water quality control,[2] research administration,[3] review of actions of the regional water quality control boards,[4] and administration of water quality grants under federal law.[5] Within the State Board is the Water Quality Coordinating Committee which provides water quality information and advice to the Board.[6]

For purposes of regional water quality planning and control, California is divided, generally along the lines of its river basins, into nine regions, each with its own regional water quality control board.[7] The regional boards formulate and adopt regional water quality control plans and objectives,[8] design programs of implementation for achieving water quality objectives,[9] set requirements for individual waste dischargers,[10] make rules and regulations to carry out their powers and duties,[11] and enforce discharge requirements.[12]

The regional boards have powerful means of enforcing their orders. If discharge requirements are not being met, boards may issue cease and desist orders to violating dischargers.[13] If this does not bring compliance they may, through the State Attorney General's Office, petition for an injunction.[14] Additionally, persons violating a cease and desist order may face civil liability of up to $6,000 per day of violation.[15] Where the violator is a community, the regional board may impose a ban on new connections to existing sewer systems which may amount to a ban on new construction.[16] Powerful as these sanctions

are, however, they relate only to existing violations of discharge requirements. The boards are specifically prohibited from framing their orders so as to prevent future violations by specifying the "design location, type of construction or particular manner in which compliance may be had. . .[17] Thus any course of action by a violator which will bring it into compliance with discharge requirements will be legally sufficient even though the scope of such remedial action may be shortsighted and wastefully restricted to the needs of too small an area or projected period of use.

The Department of Water Resources, also within the Resources Agency, has as its major responsibility the control and management of water supply for the state -- primarily through its direction of the State Water Resources Development System (the California Water Plan).[18] Thus, its major functions lie in the area of water quantity rather than quality. Its water quality function is limited, for the most part, to an annual investigation of the quality of all waters within the state with respect to all sources of pollution and a report of its findings to the legislature, the Water Resources Control Board and the regional water quality control boards.[19]

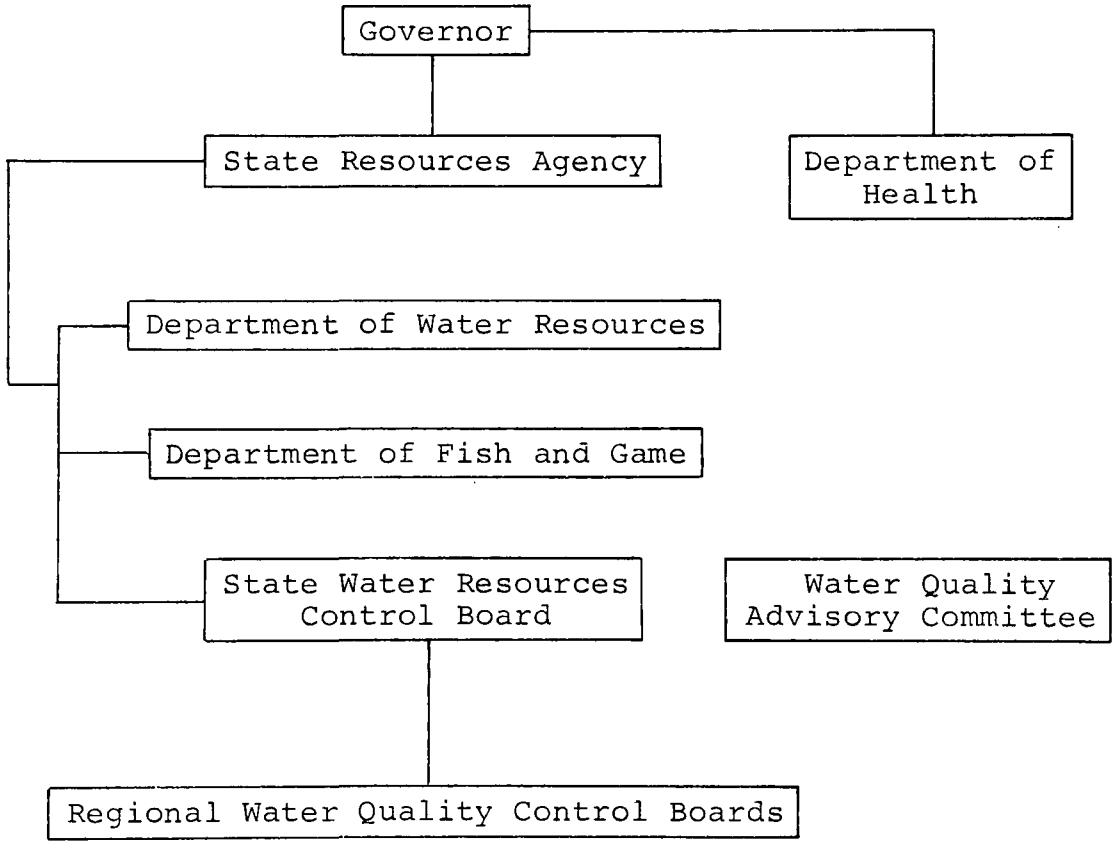
The Department of Fish and Game exercises an enforcement function with respect to water quality control by enforcing pollution prohibitions contained in the Fish and Game Code,[20] and by reporting chronic pollution situations to the appropriate regional board for correction.[21]

The State Department of Health, unlike the agencies discussed above, is not within the Resources Agency. It does, however, have water quality control functions through its control over water suppliers. These functions, exercised either by the department or through its component State Board of Health, include reporting of pollution problems to the appropriate regional boards,[22] issuance of permits to water suppliers,[23] and enforcement of quality standards through administrative controls[24] or initiation of civil or criminal judicial proceedings.[25]

Though planning and control functions with respect to water quality are strongly emphasized on the state and regional level, waste treatment management is almost exclusively a local concern.[26] Numerous types of local agencies are authorized to construct and operate sewage collection and treatment systems. These agencies include cities, counties, irrigation districts, California water districts, county water districts, county waterworks districts, community services districts, municipal utility

districts, public utility districts, municipal water districts, water conservation districts, county sanitation districts, and sanitary districts. Though the powers, functions, and the types of territory included in these agencies vary widely,[27] they have in common, however varied the statutory terms, the powers necessary to adequately carry out their waste management functions, at least at the primary treatment level.

1.2 Schematic Diagram of Existing Agencies.



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

The local agencies listed above all comply with the requirements of this provision by the terms of the statutes under which they are organized.[28] Further, under either California's Sewer Revenue Bond Act[29] or the Revenue Bond Act of 1941[30] general authority is granted to the local agencies which also complies with the requirements of this provision.[31]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Practically all of California's waste treatment management agencies are authorized to cooperate with or accept grants from the federal government.[32] The Revenue Bond Act of 1941 gives them general authority to accept federal grants and authority to do all acts necessary to avail themselves of federal aid.[33]

However, the California Water Code requires the Water Resources Control Board to approve any project for which a grant application has been made under the Federal Water Pollution Control Act[34] and "to administer any program of financial assistance for water quality control which may be delegated to it by law and . . . accept funds from the United States or any person to that end."[35] Neither of these state requirements prevents local agencies from complying with the grant requirements of the Act. The first provision merely imposes conditions on local agency grant applications -- that their relative priority is to be established by the Board,[36] that they conform to state policy,[37] and that the state share of project costs will be available.[38] These conditions are not in conflict with the Act. The assignment of grant program administrative functions to the Board is not in conflict with the Act, as the Act does not prevent administrative responsibilities from being delegated to an agency such as the Board.

Therefore, the grant approval and administration functions of the Board do not affect the grant eligibility of local agencies.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Each of California's local waste water management agencies is authorized by its organic statutes to assess and collect user charges, taxes and special assessments to meet the operational and capital costs of sewage collection and treatment.[39]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided By the Agency [§204(b)(1)(A)].

California's local waste treatment agencies are authorized to perform all acts necessary to the full exercise of their powers.[40] This authority, combined with their authority to assess charges, is sufficient to allow them to follow when assessing user charges, the practice of basing their rates on the volume, character, and delivery flow of effluents treated. Therefore, they have authority to structure their charge schedules to assure that each category of user, residential, commercial, or industrial, will pay its appropriate share of the costs of operation and maintenance of waste treatment services.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

As discussed in Section 2.4 below, California's waste treatment agencies are authorized to recover those capital costs of their facilities which were financed by either general obligation or revenue bonds. The federal portion of the capital costs of projects funded under the Act is not a cost which treatment agencies are specifically authorized to recover. However, to the extent that the terms of the grant require such recovery, the amounts involved are recoverable costs. Additionally, it can be argued that the local agencies' (i) authority to charge for their services, (ii) necessary and proper powers, and (iii) authority to cooperate with the federal government would permit them to include this type of cost in their charges to industrial dischargers. Specific legislation on this point would be desirable however.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Local treatment agencies are authorized to incur both short-term and long-term indebtedness.

2.4.1 General Obligation Funding.

Each agency is specifically authorized to issue general obligation bonds.[41] In so borrowing they are not bound by the limitation on state debt imposed by the California constitution.[42] Cities and counties, when they construct waste treatment facilities, are bound by a constitutional limitation, but only to the extent that they may not incur debt exceeding their yearly income or revenue unless approved by two-thirds of their voters and provision is made for sufficient tax revenue to discharge the obligation within forty years.[43] Roughly half of those agencies authorized to construct and operate waste treatment facilities are bound by statutory limitations on the amount of their long term general obligation debt, expressed as a percentage of the value of the assessable property within their jurisdictions.[44] With the remaining agencies there is no stated limit on the amount of their long term general obligation debt. There is however a requirement that the bond issues of any agency, whether of general or limited obligation bonds, and if not short-term, be approved at a local election.[45]

Each agency is also authorized to incur short term debt, both through a general statutory authorization[46] and through the specific authorizations which exist for a number of agencies.[47] Both the specific and general authorizations contain limitations as to the amount of such indebtedness.[48]

2.4.2 Special Funds and Revenue Funding.

Waste treatment agencies are authorized to employ revenue bond financing by specific legislation for each agency[49] and under the terms of the Sewer Revenue Bond Act[50] and the Revenue Bond Act of 1941.[51] There is no specified limit on the amount of such indebtedness.

2.4.3 Other Methods of Financing.

Another method of local agency financing in use in California is the long term lease-purchase agreement. If properly drafted, such agreements permit the local agency to incur long-term indebtedness without the necessity of submitting the project to the voters.[52]

Local agencies may also construct and operate facilities through joint exercise of powers agreements.[53] Under this type of arrangement, local agencies having the same powers with respect to a given function may, by agreement,[54] exercise that function jointly. The entity responsible for administering such agreements may be one of the parties, a corporation, or a separate public agency created by the terms of the agreement. The administering agency may issue revenue bonds or other revenue secured forms of indebtedness subject to the approval of the parties to the agreement.[55]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

As discussed in the sections above, local management agencies have authority to insure that each category of user will pay its proportionate share of treatment costs. That authority is also sufficient to insure that each participating community pay its proportionate share of treatment costs where more than one community lies within the jurisdiction or service area of a given treatment agency. Where two or more agencies operate facilities jointly, the terms of their agreement will set the proportionate share of costs to be paid by each.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of California's waste treatment agencies have specific authority to "cut off" service to existing municipalities being served by their facilities. Further, it is unlikely that such an action would be judically regarded as being within the scope of their necessary and proper powers.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

It does not appear that California's waste treatment management agencies can indefinitely refuse to provide services to existing communities within their territorial jurisdictions. Cities and counties, with their broader land use controls, would however be in a better position than the other agencies to achieve this effect through direct construction moratoria. All of the agencies are in a strong position however with respect to refusing service to areas lying outside their jurisdictions.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

As discussed in the section above, local agencies have authority to assure that communities pay their appropriate share of the agencies' costs of operation. However, this is achieved by charges paid by service recipients within the community rather than by the community itself. Surcharges or penalties would be similarly apportioned. Absent a contractual commitment for a community to pay the charges itself, the treatment agencies have no authority to levy penalties or surcharges against communities as corporate bodies.

Some waste management agencies have either civil or criminal sanctions available for enforcement of their ordinances, but these are designed to operate against individual violators rather than against communities.[56] Enforcement powers of the regional and state agencies outlined in Part 1 above are not available to the waste treatment agencies. Legislation will be required to the extent that the sanctions required by this provision of the federal act amount to more than mere power to assess their increased costs against non-complying communities.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Each agency, through its general authorization to operate a waste water treatment system is authorized to treat industrial wastes. Agencies may, through a general provision of the Revenue Bond Act of 1941, refuse to accept industrial wastes which would "otherwise be detrimental to the treatment works or its proper and efficient operation and maintenance."[57] The provision authorizes agencies to require pretreatment and payment of excess costs to the system resulting from discharge of industrial wastes which are not pretreated.

3.0 SUMMARY

California's waste water management agencies are not expressly authorized to comply with all grant requirements of the Act. In the areas of construction and operation of facilities, grant utilization, revenue generation, and financing their authority is clearly sufficient. While there is no equally clear lack of authority in other areas, they lack explicit

statutory authorization to perform certain of the functions required by the amendment. They have no explicit authority to recover the federal share of capital costs from industrial waste dischargers. They do not have authority to cut off service to any existing communities, or to assess penalty charges to any community in excess of the costs of treating its effluent.

3.1 Deficiencies

Legislation should be enacted to provide authority to recover the federal share of capital costs from industrial waste dischargers and to provide sanctions to be applied to communities or subdivisions not in compliance with an areawide plan.

4.0 BIBLIOGRAPHY

1. Baldwin ed., Legal Control of Water Pollution, 1 U.C.D.L. Rev. (1969).

2. Beebe, Hodgman and Sutherland, Joint Powers Authority Revenue Bonds, 41 S. Cal. L. Rev. 19 (1968).

3. Craig, California Water Law in Perspective, 68 Cal. Annot., Codes LXV (West 1971).

4. The Development of the California and Federal Water Pollution Control Programs, 5 University of California, Davis Law Review 234 (1972).

5. Regional Water Quality Control, 5 University of California, Davis Law Review 272x (1972).

6. Robie and Hume, Practice Under California's New Porter-Cologne Water Quality Control Act, 45 Los Angeles Bar Bull. 177 (1970).

7. Robie, Water Pollution: An Affirmative Response by the California Legislature, Pac. L. Rev. 1 (1970).

8. Symposium: The San Francisco Bay Area -- Regional Problems and Solutions, 55 Cal. L. Rev. 695, 702-727 (1967).

9. Water Quality Control in California. A Regional Approach, 7 Cal. Western L. Rev. 138 (1970).

10. Mylroie, Flanagan and Hay, California Environmental Law -- A Guide (2d ed. 1972, Center for California Public Affairs).

FOOTNOTES

1. Cal. Gov. Code §12805, 12850 et seq. (1963).
2. Cal. Water Code §§13140-13142 (1971).
3. Cal. Water Code §12162.
4. Cal. Water Code §13320.
5. Cal. Water Code §§13160, 13600-13608(1971); 13630(Supp. 1973).
6. Cal. Water Code §13171(Supp. 1973).
7. Cal. Water Code §§13200-13201(1971).
8. Cal. Water Code §13240-13241.
9. Cal. Water Code §13242.
10. Cal. Water Code §13263.
11. Cal. Water Code §13222.
12. Cal. Water Code §§13300 et seq.
13. Cal. Water Code §13301.
14. Cal. Water Code §13331.
15. Cal. Water Code §13350.
16. Cal. Water Code §13301.
17. Cal. Water Code §13360; Water Quality Control in California: A Regional Approach, 7 Cal. Western L. Rev. 138(1970); Symposium: The San Francisco Bay Area -- Regional Problems and Solutions, 55 Cal. L. Rev. 695, 702-727(1967).
18. Cal. Water Code §12931.
19. Cal. Water Code §299.
20. Cal. Fish and Game Code §§5650, 12002, 12006, 12010.
21. Cal. Fish and Game Code §5661.
22. Cal. Health and Safety Code §5413.
23. Cal. Health and Safety Code §40011.
24. Cal. Health and Safety Code §§4016-4020.
25. Cal. Health and Safety Code §§4028, 4031-4035.
26. The State Water Resources Control Board is responsible for setting training standards for treatment plant operators. Cal. Water Code §§13625-13634 (Supp. 1973).
27. See the chart accompanying this report for a listing and comparison of local agencies authorized to construct and operate sewage collection and treatment systems. Cities and counties though not shown on the comparative charts are broadly authorized to acquire and operate any public utility. Cal. Pub. Ut. Code §§10001 et seq.
28. Irrigation Districts, Cal. Water Code §§22078, 22176, 22230, 22301; California Water Districts, Cal. Water Code §§35500, 35850.5; County Water Districts, Cal. Water Code §§31047, 31100, 31005, 31049; County Waterworks Districts, Cal. Water Code §§55335, 55335.5, 55350 et seq.; Community Services Districts, Cal. Gov. Code

§§61600, 61616; Municipal Utility Districts, Cal. Pub. Ut. Code §§12801, 12721; Public Utility Districts, Cal. Pub. Ut. §16461 though the statute here does not mention authority to construct or design by contract the provision cited authorized the district to do all things necessary and convenient to the full exercises of its powers; Municipal Water Districts, Cal. Water Code §§71610, 71670, 71740, 71592; Water Conservation Districts, Cal. Health and Safety Code §§4740; 4741, 4742.2; Sanitary Districts, Cal. Health and Safety Code §§6512, 6515; Cities and Counties, Cal. Pub. Ut. Code §§10001 et seq., Cal. Gov. Code §§43635, 23004. The management agency discussion in this report is limited to those agencies listed in this note. California has created numerous other districts for specific areas by special legislation. Such districts have, in some cases, waste treatment authority but are so numerous as to be beyond the scope of this study. Texts of statutes governing such districts are compiled in the three volume appendix to the California Water Code.

29. Cal. Health and Safety Code §§4950-5072.
30. Cal. Gov. Code §§54300-54700; 8 Opinions of the Attorney General 300.
31. Cal. Health and Safety Code §§5000, 5004; Cal. Gov. Code §§54301, 54341, 54342.
32. Irrigation Districts, Cal. Water Code §§23195-23196; California Water Districts, Cal. Water Code §§35875-35876; Community Services Districts, Cal. Gov. Code 61624; Municipal Utility Districts, Cal. Pub. Ut. Code §12844; Public Utility Districts, Cal. Pub. Ut. Code, §16578; Municipal Water Districts, Cal. Water Code §71724; Water Conservation Districts, Cal. Water Code §§74610-74611; Sanitary Districts, Cal. Health and Safety Code §6512.
33. Cal. Gov. Code §54610.
34. Cal. Water Code §13604.
35. Cal. Water Code §13600.
36. Cal. Water Code §13604.
37. Cal. Water Code §13604.
38. Cal. Water Code §13602.
39. Irrigation Districts, Cal. Water Code §§22177, 25500-26553; California Water Districts, Cal. Water Code §§35501, 36550-37156; County Water Districts, Cal. Water Code §§31101, 31650; County Waterworks Districts, Cal. Water Code §§55501, 55335.5, 55700 et seq.; Community Services Districts, Cal. Gov. Code §§61621, 61615, 61750 et seq.; Municipal Utility Districts, Cal. Pub. Ut. Code

Districts, Cal. Health and Safety Code §§4766, 5473-5473.11, 4747; Sanitary Districts, Cal. Health and Safety Code §§ 6520.5, 6550.12-6550.14; Cities and Counties Cal. Gov. Code §§43225, 29922 et seq.

40. Irrigation Districts, Cal. Water Code §22180; California Water Districts, Cal. Water Code §§35506-35508; County Water Districts, Cal. Water Code §§55331, 55333, 55335.5; Community Services Districts, Cal. Gov. Code §§61621.5, 61622; Municipal Utility Districts, Cal. Pub. Ut. Code §§ 12721; Public Utility Districts, Cal. Pub. Ut. Code §16461; Municipal Water Districts, Cal. Water Code §§71590, 71592; Water Conservation Districts, Cal. Water Code §74501; County Sanitation Districts, Cal. Health and Safety Code §4766; Sanitary Districts, Cal. Health and Safety Code §§6521, 6522; Cities and Counties (Revenue Bond Act of 1941), Cal. Gov. Code §§54343, 54350, Cal. Water Code §31001; County Waterworks.

41. Irrigation Districts, Cal. Water Code §24950; California Water Districts, Cal. Water Code §35951, 36251; County Water Districts, Cal. Water Code §§31370 et seq.; County Waterworks Districts, Cal. Water Code §55520; Community Services Districts, Cal. Gov. Code §61613; Municipal Utility Districts, Cal. Pub. Ut. Code §§12841, 13201; Public Utility Districts, Cal. Pub. Ut. Code §16571; Municipal Water Districts, Cal. Water Code §71852; Water Conservation Districts, Cal. Water Code §§74790, 74791; County Sanitation Districts, Cal. Health and Safety Code §4746; Sanitary Districts, Cal. Health and Safety Code §6644; Cities and Counties, Cal. Gov. Code §§43601, 43602, 29900.

42. California Const. Art. 16 §1.

43. California Const. Art. 11 §18.

44. California Water Districts may not issue an amount in excess of that authorized by state treasurer, Cal. Water Code §36151; Community Services Districts, 20 percent of assessed value of all real and personal property within the District, Cal. Gov. Code §61613; Municipal Utility Districts, 20 percent limit Cal. Pub. Ut. Code §12842; Public Utility Districts, 20 percent limit, Cal. Pub. Ut. Code §16573, 16574; Sanitary Districts, 15 percent limit, 20 percent if county assessor's tax roll is used, Cal. Health and Safety Code §6651; Cities, 15 percent limit, Cal. Gov. Code §43605; Counties five percent limit, Cal. Gov. Code §29909. No limit is stated for Irrigation Districts, County Water Districts, County Waterworks Districts, Municipal Water Districts, Water Conservation Districts, and County Sanitation Districts.

45. Revenue Bonds require simple majority approval. General obligation bonds require either a simple majority or 2/3

approval. Irrigation Districts, Cal. Water Code §21933; California Water Districts, Cal. Water Code §35155; County Water Districts, Cal. Water Code §§31425, 31481, 21933; County Waterworks Districts, Cal. Water Code §§55552, 55610, Cal. Gov. Code §54386; Community Services Districts, Cal. Gov. Code §61670; Municipal Utility Districts, Cal. Pub. Ut. Code §13211; Public Utility Districts, Cal. Pub. Ut. Code §§16815, 16816; Municipal Water Districts, Cal. Water Code §§71853, 71950; Water Conservation Districts, Cal. Water Code §§74850, 75065, 74975, Cal. Gov. Code §54386; County Sanitation Districts, Cal. Health and Safety Code § 4764, 4805, Cal. Gov. Code §54386; Sanitary Districts, Cal. Health and Safety Code §6644; Cities, Cal. Gov. Code §§ 43614, 43652; Counties, Cal. Gov. Code §29908.

46. Cal. Gov. Code §§53852 et seq.

47. Irrigation Districts, Cal. Water Code §§24625, 24628.5; California Water Districts, Cal. Water Code §§36400, 36408.4; Community Services Districts, Cal. Gov. Code §§61743, 61749; Municipal Water Districts, Cal. Water Code §§71810, 71811, 781812; Water Conservation Districts, Cal. Water Code §74950; County Sanitation Districts, Cal. Health and Safety Code §4746.1; Cities and Counties, Cal. Gov. Code §§53821, 53822, 53840.

48. See statutes cited in note 47.

49. Irrigation Districts, Cal. Water Code §§25260, 25264; California Water Districts, Cal. Water Code §35951, 36300; County Water Districts, Cal. Water Code §31840; County Waterworks Districts, Cal. Water Code §55610; Community Service Districts, Cal. Gov. Code §61613.1; Public Utility Districts, Cal. Pub. Ut. Code §16575; Municipal Water Districts, Cal. Water Code §71853; Water Conservation Districts, Cal. Water Code §§74975-74978; County Sanitation Districts, Cal. Health and Safety Code §4805; Cities and Counties, Cal. Gov. Code §§43648 et seq., 53503. Neither Municipal Utility Districts nor Sanitary Districts are specifically authorized to issue revenue bonds, but they are authorized to do so under the Revenue Bond Act of 1941, Cal. Gov. Code §§4307, 54349.

50. Cal. Health and Safety Code §§4950-5072.

51. Cal. Gov. Code §§54300-54700.

52. Dean V. Kuchel, 35 Cal. 2d 444, 218 P 2d. 521 (1950); City of Habra v. Pellerin, 216 Cal. App. 2d 99, 30 Cal. Rptr. 752 (Dist. Ct. App. 1963); Lagiss v. County of Contra Costa, 223 Cal. App. 2d 77, 35 Cal. Rptr. 450 (Dist. Ct. App. 1963); County of Los Angeles v. Nesvig, 231 Cal. App. 2d 603, 41 Cal. Rptr. 918 (Dist. Ct. App. 1965); Beebe, Hodgman and

Sutherland, Joint Powers Authority Revenue Bonds, 41 S. Cal. L. Rev. 19(1968).

53. Cal. Gov. Code §6502; Beebe, Hodgman and Sutherland, supra note 52.
54. Cal. Gov. Code §6506.
55. Cal. Gov. Code §§6546 et seq.
56. Cal. Health and Safety Code §§6523.01, 4766, 4766.5; Cal. Pub. Ut. Code §§13575, 13576.
57. Cal. Gov. Code §54739.

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HAWAII REPORT
(1973)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Hawaii's primary water pollution control agency is the Department of Health. In addition to numerous responsibilities in other areas, it performs the following water quality control functions:

1. promulgates rules and regulations controlling and prohibiting water pollution (as well as air, noise, solid waste, and other forms of pollution);

2. issues waste discharge permits and variances;

3. issues cease and desist orders to persons violating the state environmental quality act or any rules or regulations promulgated there under;

4. institutes civil actions to enjoin violations of the act;

5. establishes water quality and effluent standards;

6. requires submission of plans or reports on new or existing wastewater treatment facilities;

7. conducts and supervises programs of research, education and training in the area of water pollution control;

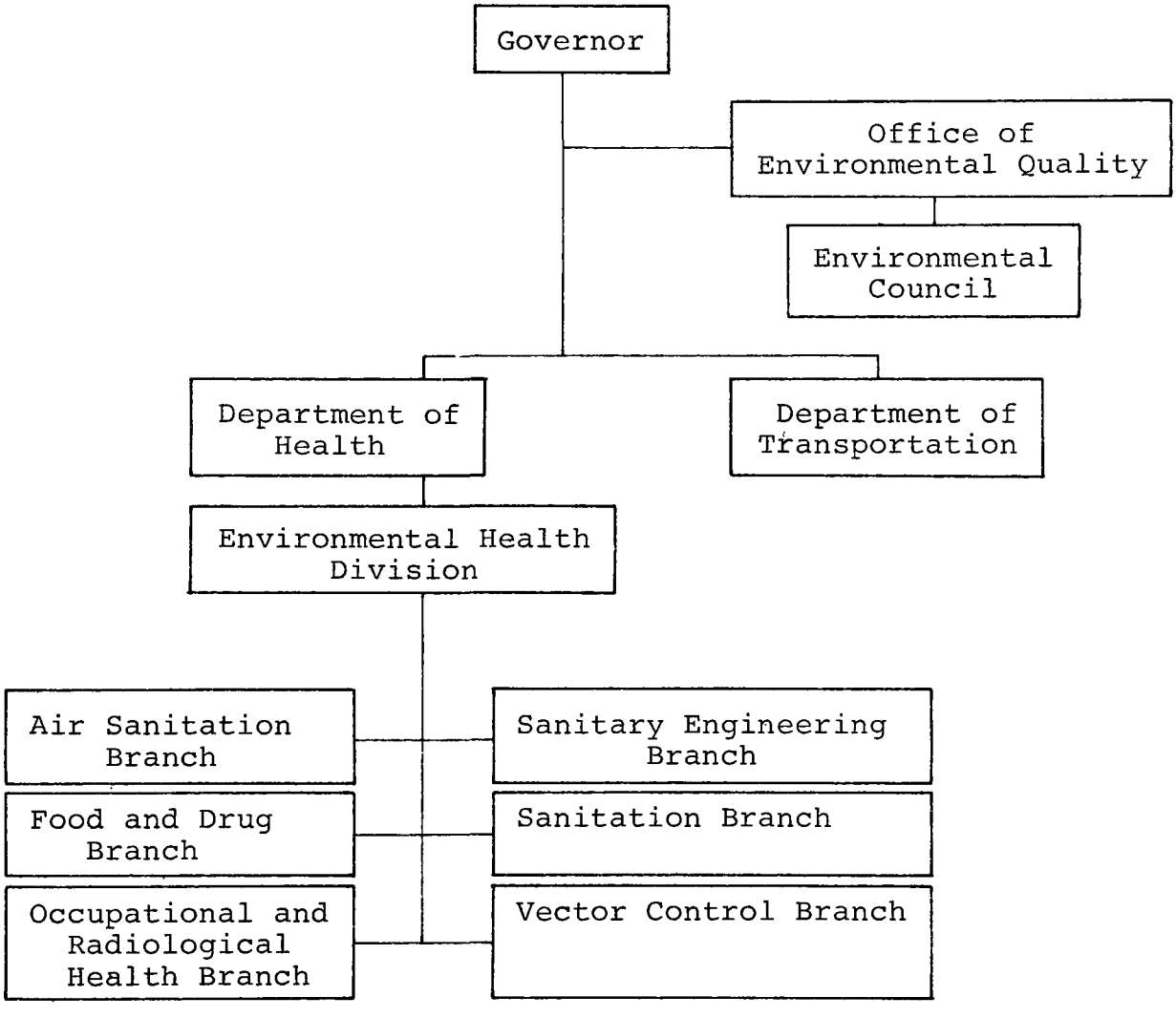
8. holds hearings, institutes legal proceedings, enters and inspects any building or place (though under a requirement to protect confidential information) as necessary to prevent, control or abate water pollution;

9. cooperates with and receives grants from the federal government (with the approval of the governor), and administers program of state grants for the construction of waste treatment facilities.[1]

The Office of Environmental Quality Control is an advisory agency which advises the governor on all matters related to environmental quality control; coordinates activities of state agencies in that area; develops a state-wide environmental quality monitoring system; conducts or arranges for environmental research, and recommends long range programs and environmental research.[2] The Environmental Council is an advisory agency with local government participation which serves as liaison between the Office of Environmental Quality and the public.[3] Also involved in water quality control is the Department of Transportation which is responsible for making rules and regulations to prevent discharges of waste into state waters either from vessels or from pipes or storage tanks on land.[4]

Waste treatment is a local function in Hawaii carried out by county or city and county governments.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

This analysis covers counties and the city and county of Honolulu, which constitute all of Hawaii's wastewater treatment agencies. The capacity of each agency is considered with respect to each of the grant eligibility requirements discussed below.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Hawaii's counties, and the city and county of Honolulu are all authorized to construct, operate and maintain sewerage systems either directly or by contract.[5]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

The governing body of any county, or its planning commission or department with the consent of the county board of supervisors may receive any funds from the federal government or any other public body in connection with projects being undertaken pursuant to its powers.[6]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Counties are authorized to levy both special assessments for improvements such as sewage systems and to levy general property taxes without limit.[7] They are also authorized to assess and collect sewage treatment service user charges.[8]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

In addition to a general authority to assess and collect charges for waste treatment services, Hawaii's county governments are granted authority to perform such acts as are necessary and

proper for the full exercise of their powers.[9] These two grants of authority are sufficient to comply with the requirements of the Act. In addition there is explicit authority for Honolulu to base the charges on volume and quality of effluent treated.[10]

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no specific authority for such recovery. However the counties are authorized to enter into agreements with the federal government.[11] Its authority also extends to expending its charge revenue to pay obligations for which such revenue has been pledged.[12] The two provisions in combination may permit the counties to recover the federal share of capital costs from industrial users to the extent that such costs are attributable to processing their wastes, however, specific legislation on this point would make this authority more clear.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

The counties have this authority as described in paragraph 2.4.1 and 2.4.2 below.

2.4.1 General Obligation Funding.

Counties are authorized to issue general obligation bonds if approved by the county board of supervisors, though debt of this type may not exceed 15% of the assessed value of taxable real property within the county.[13] They are also authorized, with approval of the Governor, State Director of Finance, and the board of supervisors, to incur short term obligations in excess of their monies available in a given year subject to a $100,000 limit ($250,000) for City and County of Honolulu) and to pay such liabilities by borrowing from the state.[14]

2.4.2 Special Funds and Revenue Funding.

The counties are authorized to issue revenue bonds, without limitation on amount, to finance waste treatment facility construction.[15]

2.4.3 Other Methods of Financing.

State grants are available to aid construction of projects as described in paragraph 1.1.

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

Counties, through the terms of their authority to assess charges, have sufficient implied authority to comply with this requirement.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

Counties have no authority, express or implied, to cut off waste treatment services to a community currently connected to its waste treatment system. Furthermore, it is unlikely that such action would be judicially regarded as being within the scope of their necessarily implied powers. The authority, noted in Section 1.1 above, of the state department of health to regulate waste discharges through the mechanism of discharge permits is essentially the power to refuse to receive wastes. Though this required power is possessed by a state regulatory agency rather than by a local management agency, the state minimally complies with this requirement.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Counties are empowered to do all things necessary to execute their powers.[16] Where the non-compliance of a community within their jurisdictions would result in damage to or overloading of their waste disposal systems or endanger public health, refusal to connect such a community would be within their statutory authority. This conclusion is supported for the counties of Honolulu and Kauai by statutes empowering them to regulate subdivisions to ensure adequate provision for sewage disposal.[17]

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

No sanctions exist which would be applicable to municipalities by the counties as the charge system and penalties for violation of ordinances are designed to affect individuals.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Authority of the counties to provide waste treatment services, discussed in Section 2.1 above, is sufficient to permit them to treat industrial wastes. Requiring pretreatment of industrial wastes is reasonably within the power of the counties where such pretreatment is necessary to protect the proper operation of their waste treatment facilities.[18] Absent such pretreatment the counties would necessarily be empowered to refuse industrial wastes in order to execute their waste treatment function.

To the extent that the information available through monitoring and reporting is necessary to assess charges or operate facilities efficiently, requirements for monitoring and reporting are within the counties' necessary powers. There is no provision for protecting secret industrial processes but no authority is apparent which would allow industrial dischargers to withhold required information in the absence of such a protective provision.

3.0 SUMMARY

Hawaii's counties are generally in compliance with the requirements of the Act. However, legislation is advisable to clarify and strengthen their authority in certain areas.

3.1 Deficiencies

Counties should be clearly authorized to recover from industrial waste dischargers the federal portion of the capital cost of new facilities attributable to treatment of their wastes. Sanctions should be provided against noncomplying communities. Specific authority should be provided allowing the counties

to require pretreatment, monitoring and reporting by industrial dischargers. In support of such authority, legislation should be enacted requiring counties to treat data on industrial discharges as confidential if so requested by the reporting company.

FOOTNOTES

1. HRS §§342-1 through 342-20, 342-31 through 342-34 (Supp. 1972).
2. HRS §§341-3, 341-4 (Supp. 1972).
3. HRS §§341-3, 341-6 (Supp. 1972).
4. HRS §266-3(6).
5. HRS §§49-3, 61-2, 64-91, 64-94, 70-77, 70-96 (1968).
6. HRS §46-7.
7. HRS §§47-16, 246-1 et seq.
8. HRS §§67-1 et seq., 61-2, 70-77.
9. HRS §§61-2, 70-70, 70-96.
10. HRS §70-77.
11. HRS §46-7.
12. HRS §49-10.
13. HRS §47-2 (Supp. 1972).
14. HRS §§46-46, 36-23; Const. of Hawaii, Art. VI §3.
15. HRS §§49-1 et seq.
16. HRS §§61-2(4), 70-96.
17. HRS §§65-22, 65-23, 70-71.
18. See statutes cited in footnote 16. Supra.

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NEVADA REPORT
(1971)

1.0 OVERVIEW

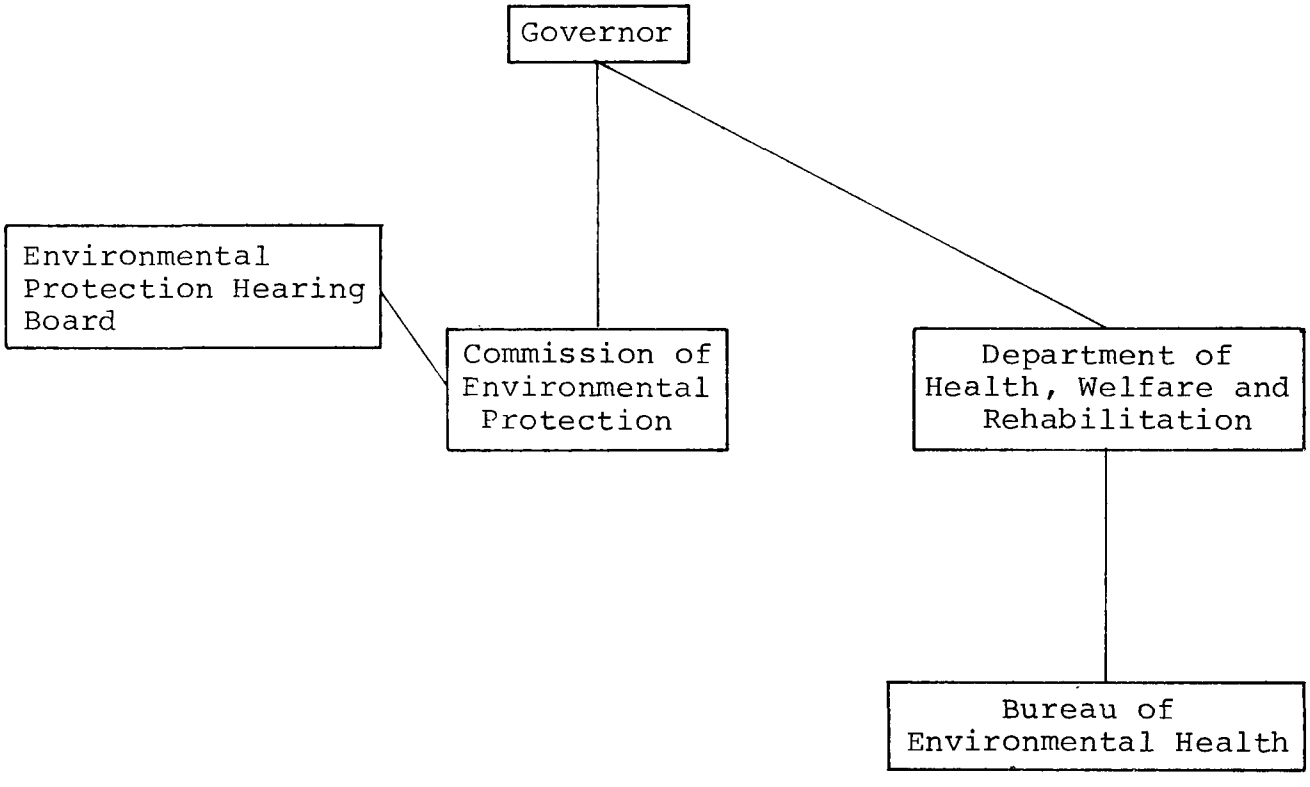
1.1 Description of Existing Agencies

Nevada's primary water quality control agency is the Commission of Environmental Protection. Among its primary functions in this area, the Commission:

1. adopts water quality standards;[1]
2. administers Nevada's water pollution control law through its rules, orders and water and waste discharge standards;[2]
3. may enter upon public or private property to inspect, investigate and determine conditions relating to pollution of any waters within the state;[3]
4. approves plans for construction and operation by political subdivisions of sewerage systems and treatment works and must be notified prior to any planned increase of waste discharges by industrial or commercial dischargers;[4]
5. serves as the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, and is authorized to take all steps necessary to secure the benefits of that act for the state and its political subdivision;[5]
6. accepts, supervises and administers loans and grants for the federal government;[6]
7. holds hearings as it deems necessary and may require reports from dischargers of materials which are or may become deleterious to human or animal life;[7]
8. may order compliance with statutes or regulations and initiate action to recover penalties for violation. Such violation of a statute, rule or regulation is a civil offense with a $2500 per day administrative fine which may be levied by the Commission, or for lesser violations a fine of up to $500 may be levied. Fines are in addition to other enforcement actions;[8]
9. advises and consults with the federal government, other states, interstate agencies, political subdivisions and industries affected by the state water pollution control law and Commission policies.[9]

Nevada has two other state level agencies with major water pollution control responsibilities. The Department of Health, Welfare and Rehabilitation, through its Bureau of Environmental Health, is responsible for issuing permits for construction upon or alteration of the shoreline of Lake Tahoe and for discharge of treated water into the lake.[10] The Environmental Protection Hearing Board serves as an administrative appellate agency for the Commission and for the Bureau of Environmental Health.[11]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

This analysis covers towns, cities, general improvement districts, local improvement districts and counties which constitute all of Nevada's waste water treatment agencies. The capacity of each of these agencies is considered with respect to the grant eligibility requirements discussed below.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Nevada's waste water treatment agencies are authorized to construct (directly or by contract), operate and maintain waste treatment facilities.[12]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Through authority contained in the Nevada Water and Sewer Revenue Bond Law, all of the state's waste water treatment agencies may accept contributions or loans from the United States government or any of its agencies to finance construction, operation and maintenance of waste water treatment facilities.[13]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Nevada's waste water treatment agencies are authorized to collect user charges for waste water treatment services and to levy and collect both property taxes and special assessments.[14]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

In addition to a genera authority to assess and collect charges for waste water treatment services, Nevada's agencies

have authority to perform such acts as are necessary and proper for the full exercise of their powers.[15] These two grants of authority are sufficient to allow them to base their user charges on the character, volume and rate of flow of effluent treated. Therefore, they have authority to structure their charge schedules to assure that each category of user, residential, commercial or industrial, will pay its proportionate share of the costs of operation and maintenance of waste water treatment facilities. See also paragraph 2.7 infra in which treatment of industrial wastes is discussed.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204 (b)(1)(B)].

There is no specific legislation authorizing Nevada's waste water treatment agencies to recover such capital costs solely from industrial dischargers. To the extent that such recovery is required under the terms of a federal grant, it is a cost which agencies may recover. Though only one class of user will be subject to such cost recovery, the classification is a reasonable one in terms of avoiding use of public funds to decrease private costs of industrial dischargers. Specific legislation would be advisable, however, to expressly authorize such an element of agency charges to industrial dischargers.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Subject to the terms and limitations discussed in the following sections, Nevada's waste water treatment agencies have authority to incur long-term indebtedness. The agencies may also incur short-term debt under provisions of their organic statutes[16] and of the Water and Sewer Revenue Bond Laws.[17]

2.4.1 General Obligation Funding.

All of Nevada's waste water treatment agencies are authorized to issue long-term general obligation bonds under a variety of amount limitations and electoral requirements.[18]

2.4.2 Special Funds and Revenue Funding.

Under provisions of the Water and Sewer Revenue Bond Laws, all of Nevada's waste water treatment agencies may issue revenue bonds, without limit on amount, after receiving majority electoral approval.[19]

2.4.3 Other Methods of Financing.

Counties and general improvement districts may issue special assessment bonds.[20] General improvement districts may borrow from the state or federal governments without limit.[21] Cities, towns, counties and general improvement districts may further secure their general obligation bonds by pledging revenues to their payment.[22] Counties may issue interim warrants for construction of improvements (either general obligation or revenue warrants) without an election if payable from the general property tax of the fiscal year in which issued.[23]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

Under Nevada's Interlocal Cooperation Act,[24] any of the state's waste water treatment agencies can contract with one or more other agencies for the purpose of jointly operating treatment facilities, or to sell or purchase the services of such a facility. The contractual apportionment of treatment costs will be acceptable for grant purposes as representing the proportionate share of treatment costs attributable to each service recipient. Therefore, in such cases the agreement will assure that each participating community will pay its proportionate share of treatment costs. Where a facility serves only a single community, the agencies, by the terms of their authority to assess user charges[25] have sufficient authority to comply with this requirement.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of Nevada's waste water treatment agencies have specific authority to "cut-off" service to municipalities or

subdivisions being served by their facilities. Further, it is unlikely that such an action would be judicially regarded as being within the scope of their necessary and proper powers. The authority of the State Commission of Environmental Protection to regulate waste discharges through the use of waste discharge standards and permits could include the power to refuse to receive wastes. Though this required power is possessed by a state regulatory agency rather than by a local management agency, the state may minimally comply with this provision of the Act.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

Nevada's waste water treatment agencies are not required to connect their treatment facilities to communities or subdivisions outside their boundaries. With respect to such communities or subdivisions they can deny new "hook-ups." The power of the agencies to refuse to connect communities or subdivisions within their boundaries is much more limited. Further, as the noncompliance involved in such cases will often be attributable to the agency itself the sanction of denying new "hook-ups" would be meaningless.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

No sanctions exist which would be applicable to municipalities or subdivisions as the charge system and penalties for violation of ordinances are designed to operate against individuals. Additionally, where the violator is an unincorporated community or subdivision, there is no single individual against which sanctions could be applied.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

Any of Nevada's waste water treatment agencies may contract with industrial or mining establishments to provide facilities to reduce and abate industrial pollution in return for periodic payments at least sufficient to cover the cost to the agency of providing such services.[26] More broadly, the authority of the agencies to provide waste treatment services, discussed in Section 2.1 above, is sufficient to

permit them to treat industrial wastes. Requiring pretreatment of industrial wastes is within the agencies' powers to the extent that pretreatment is necessary to protect the proper operation of their facilities. Absent such pretreatment the agencies would necessarily be empowered to refuse industrial wastes in order to execute their waste treatment function.

3.0 SUMMARY

Nevada's waste water treatment agencies are largely in compliance with the requirements of the Act. However, new legislation would be advisable in certain areas to clarify and strengthen their authority.

3.1 Deficiencies

The agencies should be given express authority to recover from industrial waste dischargers the federal portion of the capital cost of new facilities attributable to treatment of their wastes. In addition, sanctions should be provided for use against noncomplying communities. Specific authority should be provided for the agencies to require pretreatment, monitoring and reporting by industrial dischargers.

4.0 BIBLIOGRAPHY

1. Water Pollution Control Plan; Fiscal Year 1973 (Undated, Nevada Commission of Environmental Protection).

2. Shamberger, H.A., A Comprehensive Water and Related Land Resources Plan for the State of Nevada, University of Nevada, Center for Water Resources Research (1967).

FOOTNOTES

1. N.R.S. §§445.215, 445.220 (1971).
2. N.R.S. §§445.190, 445.195(5), 445.195(6).
3. N.R.S. §§445.205, 445.335(1), 445.335(2).
4. N.R.S. §§445.195(2), 445.270, 445.360(1).
5. N.R.S. §445.185.
6. N.R.S. §445.195(1). Such grants may not be expended for any other purposes than those for which they were provided.
7. N.R.S. §§445.195(7), 445.230, 445.235, 445.250, 445.360(2). If material contained in such reports is certified confidential, the Commission shall so hold it. N.R.S. §445.255.

8. N.R.S. §§445.320, 445.345(1), 445.340(2), 445.340(3), 445.375.
9. N.R.S. §445.195(3).
10. N.R.S. §§445.080, 445.090, 445.100.
11. N.R.S. §§445.285, 445.340(5).
12. General improvement districts, N.R.S. §§318.100, 350.370, 318.140; cities and towns, N.R.S. §§271.015, 271.265, 271.035, 266.285, 350.370; local improvement districts, N.R.S. §§309.030, 309.130(1)(b), 350.370 (It should be noted that no new local improvement districts could be formed after 1967, N.R.S. §309.025); counties, N.R.S. §§244.366, 244.865, 350.370 (Note that such operations by counties are restricted by N.R.S. §§244.865, 244.366 to areas outside the limits of incorporated cities and towns).
13. N.R.S. §350.370(6).
14. General improvement districts, N.R.S. §§318.200, 350.370(3), 350.373, 318.225, 318.350, 318.370; local improvement districts, N.R.S. §§309.360(2), 350.370(3), 350.373, 309.360(3), 309.330, 309.160, 309.300(1); cities and towns, N.R.S. §§266.285(3), 267.415, 350.370(3), 350.373, 266.600(3), 266.605; counties, N.R.S. §§244.807, 244.366, 350.370(3), 350.373, 244.150, 244.866.
15. General improvement districts, N.R.S. §§318.210, 318.170, 350.370(7); local improvement districts, N.R.S. §§309.130(4), 309.130(1)(d), 350.370(7); cities and towns, N.R.S. §§266.105, 350.370(7); counties, N.R.S. §§244.195, 244.357, 350.370(7).
16. General improvement districts may, on affirmative vote of four district trustees, issue short-term notes, warrants and interim debentures subject to the limitation amount applicable to long-term general obligation bonds. N.R.S. §§318.275, 318.280, 318.277. Subject to approval of the State Board of Finance, local improvement districts may issue short-term obligations maturing in five years of less without a limitation on amount or a popular vote. N.R.S. §§354.474, 309.331(1)(a), 354.618, 354.430. Where a county improvement costs less than $25,000, the county may (without a bond issue) advance the cost out of its general fund in no more than ten annual installments. N.R.S. §§244.556 - 244.558.
17. The Water and Sewer Revenue Bond Law empowers the governing body of any of the agencies to authorize, by unanimously adopted resolution, short-term financing for the purpose of meeting a great necessity or emergency, without vote by the electors. Before passage of such a resolution, the intent to do so must be noticed to the

18. General improvement district general obligation debt may not exceed the value of taxable property (excluding motor vehicles) of the district. A simple electoral majority is required to authorize bond issues. N.R.S. §§318.275, 318.277, 318.305. General obligation indebtedness of cities and towns may not exceed thirty percent of the value of the taxable property within the municipality for bonded debt, and twenty percent for non-bonded debt. Majority approval of the local bond commission is required to authorize bond issues. N.R.S. §§266.600(4), 267.400, 266.600(4)(a), 350.004. Local improvement districts may issues bonds with simple electoral majority approval. N.R.S. §§309.331, 309.336. General obligation indebtedness of counties (excluding short-term debt and assessment bonds) may not exceed ten percent of the value of the taxable property within the county. Majority approval of the local bond commission is required to authorize bond issues. N.R.S. §§244.805, 350.004.
19. N.R.S. §§350.370(3), 350.380.
20. N.R.S. §§318.460, 244.866.
21. N.R.S. §318.339.
22. N.R.S. §§318.325, 244.806, 266.600, 267.400.
23. N.R.S. §§244.883, 244.805.
24. N.R.S. §§277.080 - 277.180.
25. See statutes cited at Note 3 supra.
26. N.R.S. §350.370(5).

REGION X

PLEASE REFER TO FORMAT
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ALASKA REPORT

(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Alaska's primary statewide agency for water pollution control is the Department of Environmental Conservation. Its functions in protecting the quality of Alaska waters include:

1. formulation and review of the State Environmental Plan, including water pollution control;[1]
2. reviews of programs and actions of other state departments as to their effect on water quality;[2]
3. adoption of water standards;[3]
4. adoption of regulations to control water pollution, protect water supplies, and to govern collection and disposal of sewage and industrial waste;[4]
5. action as the official state agency in all matters affecting the purposes of the Department under Federal law;[5]
6. issuance of permits to waste dischargers, either for direct disposal or discharge into a sewage system;[6]
7. making studies and surveys in furtherance of its water quality function.[7]

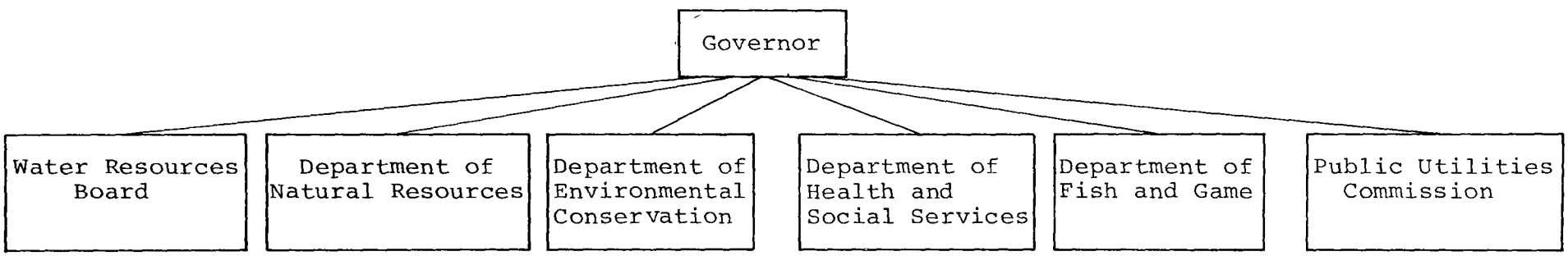
The Department is empowered to enforce its regulations and standards through compliance orders or by ordering immediate abatement of serious pollution conditions. Its agents are authorized to enter facilities, inspect for compliance or for sources of pollution, and to obtain search warrants for such purposes.[8] Pollution of state waters is a misdemeanor punishable by fines up to $25,000 or a year's imprisonment or both. Further, polluters may face civil penalties of from $5,000 to $100,000.[9]

Among other state agencies charged with water quality control functions is the Department of Health and Social Services. The Department carries out a program for construction of waste disposal facilities for villages without charge to users for construction costs. After construction, ownership of the facility is transferred to the governing body of the village.[10] Persons intending to use or divert

state waters must notify the Department of Fish and Game of his plans for approval. Failure to do so may result in civil or criminal penalties.[11] The Department of Natural Resources has numerous functions relating to state waters. However, it is concerned with water rights rather than with water quality.[12] The Water Resources Board, of which the commissioner of the Department of Natural Resources is executive secretary, advises the Governor on the use, appropriation and protection of the waters of the state.[13] The Public Utilities Commission sets standards, regulates, and reviews activities of the state's public utilities, including waste treatment agencies.[14]

Except for the duty of the Department of Health and Social Services to construct treatment facilities for villages, construction and operation of waste treatment facilities is an exclusively local function exercised by the cities, villages and boroughs (counties) of the state.[15] Waste treatment systems are limited in area to the organized boroughs, but may include more than one municipality.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

The agencies primarily discussed in this section are Alaska's first and second class cities and boroughs. The capacity of each of these agencies is considered with respect to the requirements of the Act below.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Alaska's wastewater treatment agencies are authorized to operate and maintain sewage treatment services.[16] Authorization to do so by contract, where not stated, is included by necessary implication in the general authorization to provide for sewage treatment.[17]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Alaska's waste treatment agencies are not specifically authorized to accept federal grants.[18] The Department of Environmental Conservation is authorized to administer local grants under the Federal Water Pollution Control Act. Thus, the waste treatment agencies are at least implicitly authorized to accept and utilize grants. Additionally, grants will identify the agency or agencies to which funds are to be disbursed. Therefore, in practical terms, Alaska's waste treatment management agencies comply with this requirement. It would be advisable, though not essential, that legislation be enacted to specify the terms under which local agencies may accept and use grants.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Rates and charges may be established for all municipal public utilities.[19] "All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.[20]" While this authority falls short of expressly authorizing rates based on the volume and character of effluent, such rates should be allowed since they are not "unreasonable."

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

Public utilities operated by Alaska's local governments may maintain different charges to different users of its services so long as such differences are not unreasonable.[21] Further, the general authority of each agency to assess charges is sufficient authority to allow them to charge each category of user for its share of treatment costs. As treatment cost is a function of both the volume and character of effluent, the authority to charge necessarily includes authority to base charges on volume, character and rate of flows to the extent that these factors differ between different categories of users.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no specific legislative authorization permitting such cost recovery. However, to the extent that such recovery is required under the terms of a federal grant, it is a cost which the treatment agency may recover. Recovering this amount from industry as a cost of furnishing services to industry is reasonable in that it overcomes the objection of using public funds to decrease costs of industrial users of waste treatment facilities. Legislation would be advisable to explicitly authorize such charges.

2.4 Authority to Incur Short- and Long-term Indebtedness [§208(c)(2)(F)].

Waste treatment agencies possess bond issuing authority which is broad enough to encompass incurring both short- and long-term indebtedness.

2.4.1 General Obligation Funding.

The agencies are authorized to incur debt funded by general obligation bonds which pledge the full faith and credit of the municipality.[22] Such bonds must be approved by a majority of those voting on the question.[23] The interest rates, maturities, and manner of execution of the bonds is fixed by the assembly or council of the municipality.[24]

2.4.2 Special Funds and Revenue Funding.

Revenue bonds can be issued by municipalities for the purpose of constructing capital improvements to be operated upon a revenue-producing basis.[25] No election is required to authorize these bonds, and the assembly or council fixes the interest rates, maturities and other terms.[26]

2.4.3 Other Methods of Financing.

Municipalities are also empowered to issue revenue anticipation notes and bond anticipation notes which must mature within one year.[27]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

The waste treatment agencies, through the terms of their authority to assess user charges[28] and to jointly operate facilities, have sufficient implied power to comply with this requirement.

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply with Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of Alaska's wastewater treatment agencies have specific authority to "cut off" service to municipalities or subdivisions being served by their facilities. Further, it is unlikely that such action would be judicially regarded as being within the scope of their necessarily implied powers. The authority, noted in Section 1.1 above, of the state department of environmental conservation to regulate waste discharges through the mechanism of discharge permits is essentially the power to refuse to receive wastes. Though this required power is possessed by a state regulatory agency rather than by a local management agency, the state is minimally in compliance with this requirement.

2.6.1 Authority to Deny New or Additional "Hook-ups" (Moratorium Effect).

No specific authority exists to deny new or additional hook

ups. However, the agencies are authorized to regulate acts endangering the health and safety of the community.[29] This authority is limited by a prohibition against maintaining an unreasonable difference as to service between localities,[30] and further by a requirement that a public utility permit another public utility to use its facilities as dictated by convenience and public necessity, where no substantial detriment to the facility or its service will result.[31] In face of these provisions, and absent any statutory requirement to provide service in all cases, it appears that the treatment agencies may deny new hook ups within their jurisdictions where such action would not be unreasonable in terms of efficient waste treatment management.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply with the Areawide Plan.

Under their authority to assess charges, waste treatment agencies may clearly assess surcharges and penalties which amount to no more than the additional cost of treating a municipality's wastes resulting from its non-compliance with an area plan. This is supported by a provision allowing a difference in rates as between that charged within a service supplying community and that charged outside its corporate limits.[32] Where a municipality rather than its inhabitants pays the charges, the charging agency will have authority to assess increased charges, but only by the amount of its increased costs. Where individuals pay the charges no sanction is available against municipalities. Such penal sanctions as local governmental agencies are empowered to enforce apply only to individuals, not municipalities or subdivisions.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

The authority to provide waste treatment services, discussed in Section 2.1 above, should reasonably be sufficient to allow waste treatment agencies to treat industrial wastes. The authority of waste treatment agencies to forbid by ordinance acts endangering public health and safety,[33] and of public utilities rules and regulations governing conditions under which they will render service[34] permit the agencies

and their utilities to refuse industrial wastes which would damage the treatment works, to require pre-treatment and to require reports on volume and character of effluents discharged into the system by industry. These provisions are also sufficient to permit enactment of ordinances requiring industrial dischargers to monitor the volume, character, and rate of flow of their wastes.

3.0 SUMMARY

Alaska's waste treatment management agencies are in compliance with the studied provisions of the Act. However, in certain areas enactment of legislation explicitly granting powers currently only implied would be advisable.

3.1 Deficiencies

Local government agencies should be clearly authorized to recover from industrial users the federal portion of capital costs allocable to treatment of their wastes. Sanctions should be authorized which would be effective against communities as well as individuals.

4.0 BIBLIOGRAPHY

None

FOOTNOTES

1. A.S. §§46.03.040, 46.03.060 (1971).
2. A.S. §46.03.020(2).
3. A.S. §§46.03.070, 46.03.080.
4. A.S. §46.03.020(10).
5. A.S. §46.03.020(9).
6. A.S. §46.03.100.
7. A.S. §§46.03.020(5).
8. A.S. §§46.03.020(6), 46.03.860.
9. A.S. §46.03.760.
10. A.S. §§46.07.010-46.07.040.
11. A.S. §§16.05.870, 16.05.880.
12. A.S. §§46.15.010 et seq.
13. A.S. §46.15.210.
14. A.S. §§42.05.010 et seq.
15. It should be noted that Alaska's local governmental units are designed to provide governmental services for large area units with small populations often sparsely settled. The less populated of these units do not

possess all of the powers envisioned by the proposed amendment. However, the need for waste treatment facilities in such areas is sufficiently limited that their compliance or non-compliance with federal grant requirements will not affect the compliance of the state as a whole. This report is primarily concerned with the more developed governmental units and will therefore be limited to consideration of first and second class cities and boroughs. Pertinent authority of other local governmental agencies will be included in the footnotes, but will not be discussed in the text.

16. A.S. §29.48.030(2) (1972).
17. Femmer v. City of Juneau, 9 Alaska 175, affd 9 Alaska 315, 97 F 2d 649 (9th Cir. 1938).
18. However, all municipalities are specifically authorized to enter into agreements with the United States. A.S. §29.48.010(4). In addition, §29.58.040 authorizes revenue notes in anticipation of federal grants.
19. A.S. §29.48.060.
20. Id.
21. A.S. §42.05.391.
22. A.S. §§29.58.150, 29.58.180.
23. A.S. §29.58.160(a).
24. A.S. §29.58.170.
25. A.S. §29.58.200.
26. A.S. §§29.58.205, 29.58.210.
27. A.S. §§29.58.010, 29.58.070.
28. See note 19 supra.
29. A.S. §29.48.035.
30. A.S. §42.05.301.
31. A.S. §42.05.311.
32. A.S. §42.05.391.
33. A.S. §29.48.035.
34. A.S. §42.05.291(b).

PLEASE REFER TO FORMAT
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IDAHO REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

Idaho's primary water pollution control agency is the Department of Environmental Protection and Health.[1] The Department is headed by an Administrator who is in charge of supervision and administration. The actual functions of rule-making and hearings are carried out by the Board of Environmental Protection and Health.[2] This Board is composed of seven members appointed by the governor with the consent of the senate.[3]

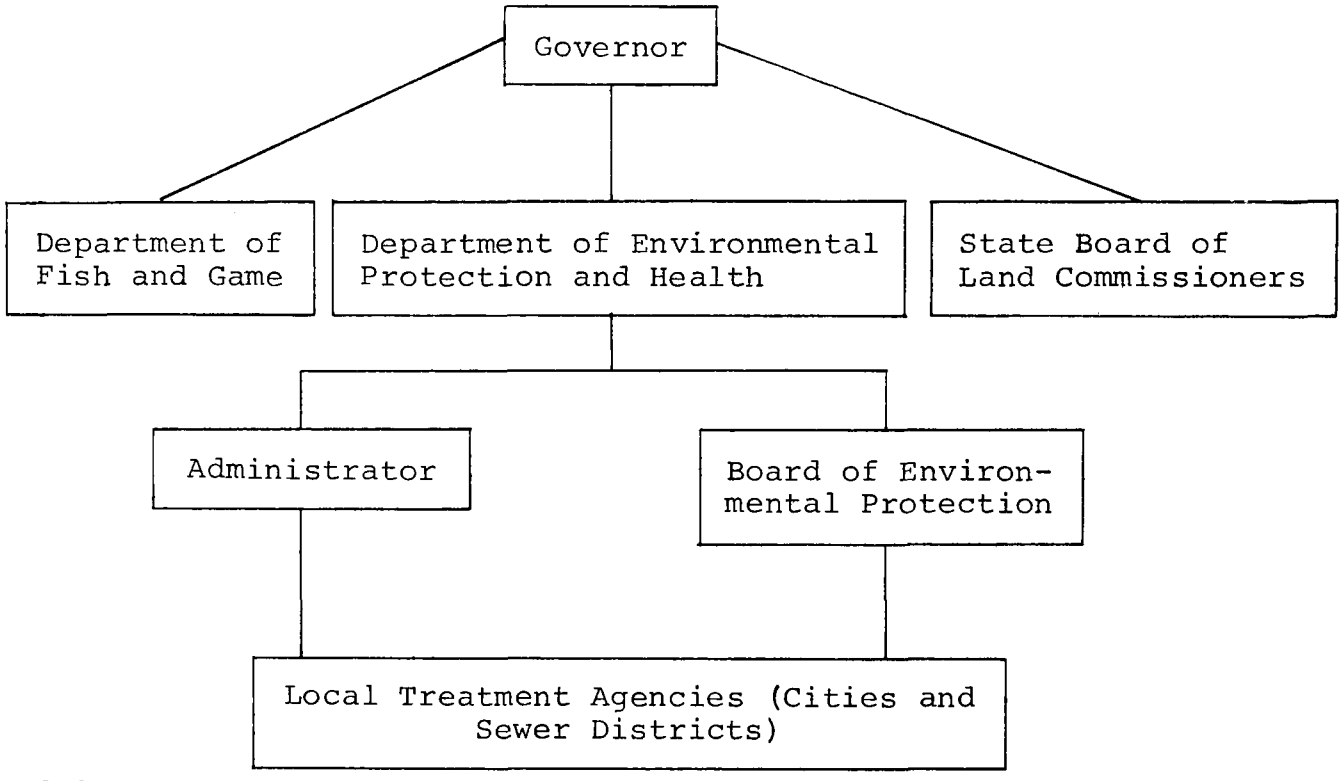
The Department, through the administrator and Board, has authority over the broad functions of planning, standard setting, regulating and enforcing the state pollution abatement program.[4] More specifically, the Department has the power to formulate rules, regulations and standards, which then become state laws, to issue licenses and permits for discharging effluents, and to enforce all laws and regulations regarding environmental protection.[5]

When it has reason to believe that a violation of any pollution laws has occurred, the Board can hold a hearing to investigate. Appeals from these hearings to the district court are allowed.[6] If after the Board issues an order corrective measures are not taken, a civil action may be initiated to enjoin the violator or compel compliance by a writ of mandamus.[7] Penalties of $1000 per day can also be imposed.[8] The State Attorney General is authorized to bring any criminal action requested by the Board, and he may delegate this authority to a county prosecuting attorney.[9]

Two other state agencies with water quality functions are the Fish and Game Department and the State Board and Land Commissioners. The Fish and Game Department enforces pollution prohibitions included in the state's fish and game laws.[10] The State Board of Land Commissioners regulates placer mining to protect state land and waters[11] and has appropriated to it moneys received from the federal government for construction of sewage treatment facilities on state owned lands.[12]

Though subject to state level planning and regulation, as discussed above, waste water treatment is primarily a local function, carried out by Idaho's cities and sewer districts.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208 (c) (2) AND SELECTED RELATED SECTIONS OF THE ACT.

This analysis covers cities and sewer districts which constitute all of Idaho's waste water treatment agencies. The capacity of each agency is considered with respect to each of the grant eligibility requirements discussed below.

2.1 Authority Directly or By Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [208(c)(2)(C)].

Idaho's wastewater treatment agencies are authorized to construct, directly or by contract, operate and maintain waste treatment facilities.[13]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Idaho's wastewater treatment agencies have authority sufficient to comply with this requirement. Cities have express authority, while sewer districts have implied authority.[14]

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Idaho's waste treatment agencies are authorized to collect user charges for wastewater treatment and to levy both property taxes and special assessments.[15]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

In addition to a general authority to assess and collect charges for wastewater treatment services, Idaho's sewer districts and cities are authorized to perform such acts as are necessary and proper for the full exercise of their powers.[16] These two grants of authority are sufficient to allow them to base their user charges on the character, volume and rate of flow of effluent treated. Therefore, they have implied authority to structure their charge schedules to assure that each category of user, residential, commercial, or industrial, will pay its appropriate share of the costs of operation and maintenance of wastewater treatment facilities.

2.3.2 Full Recovery Will Be Had From the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no specific legislation authorizing either sewer districts or cities to recover such capital costs solely from industrial dischargers. To the extent that such recovery is required under the terms of a federal grant, it is a cost which agencies may recover. Though only one class of user will be subject to such cost recovery, the classification is a reasonable one in terms of avoiding use of public funds to decrease private costs of industrial dischargers. Legislation would be advisable, however, to explicitly authorize such an element of agency charges to industrial dischargers.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Subject to the terms and limitations discussed in the following sections, Idaho's cities and sewer districts have authority to incur both short- and long term-indebtedness. With cities, however, their short term borrowing capability is not express, but their authority to incur long-term debt and power to contract are broad enough to encompass incurring short-term debt.

2.4.1 General Obligation Funding.

Both cities and sewer districts may issue general obligation bonds without a limit on amount, but bond issues must receive two-thirds electoral approval.[17]

2.4.2 Special Funds and Revenue Funding.

Cities may issue revenue bonds without a limit on amount, subject to the same electoral requirement applied to general obligation issues.[18] The authority of sewer districts to issue revenue bonds is embodied in a provision allowing the district board to determine provisions for bond repayment. Thus, the districts may issue revenue bonds subject to the limitations applicable to general obligation issues.[19]

2.4.3 Other Methods of Financing.

Both cities and sewer districts may issue local improvement bonds or warrants with a maximum maturity of ten years.[20]

2.5 Authority to Assure in Implementation of its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs [§208(c)(2)(G)].

Sewer districts may cooperate with other agencies in construction of facilities and other matters affecting their affairs.[21] Cities may cooperate with other agencies in the exercise of any of their powers,[22] and may jointly construct and finance wastewater treatment facilities.[23] In any such joint or cooperative venture, the contractual apportionment of treatment costs should be acceptable for grant purposes as representing the proportionate share of treatment costs attributable to each service recipient. Therefore, in such cases the treatment agency will have authority to assure that each participating community will pay its proportionate share of treatment costs.

Additionally, both cities and sewer districts, through the terms of their authority to assess user charges,[24] have sufficient authority to comply with this requirement.

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality of Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of Idaho's wastewater treatment agencies have specific authority to "cut off" service to municipalities or subdivisions being served by their facilities. Further, it is unlikely that such action would be judicially regarded as being within the scope of the agencies' necessarily implied powers. However, the authority, noted in section 1.1 above, of the the state board of health to regulate waste discharges through the mechanism of discharge permits is essentially the power to refuse to receive wastes. Though this required power is possessed by a state regulatory agency rather than by a local management agency, the state minimally complies with this requirement of the Act.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Idaho's wastewater agencies are not required to connect their facilities to communities or subdivisions outside their boundaries. With respect to such communities or subdivisions, they can deny new "hook-ups." Their power to refuse to connect communities or subdivisions within their boundaries is more limited. They have, however, some regulatory powers in this area. Sewer districts may prescribe and enforce rules and regulations governing connections with their facilities.[25] Therefore, if the non-compliance with an areawide plan is also non-compliance with the district connection regulations, the connection could be denied.

City zoning powers include zoning with the purpose of providing adequate waste treatment.[26] This power is one step removed from denial of connections, but serves the same purpose. This power is strengthened by the requirement that subdivision developers must obtain approval of their sewerage facility plans from the state board of health before they may file their plat with the city.[27] However, where the community or subdivision involved is not in the planning stage, but has already been constructed, it should be noted that its non-compliance

with an areawide plan will often be attributable to the city or sewer district within which it is located. In such cases the sanction of denying connection would not be practical.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

No sanctions exist which could practically be applied to municipalities or subdivisions by the wastewater treatment agencies. The charge system and penalties for violation of ordinances were primarily designed to apply to individuals. Further, where the violator is an unincorporated community or subdivision, there is no single individual against which sanctions could be applied.

2.7 Authority to Accept For Treatment Industrial Wastes. [§208(c)(2)(I)].

The authority of Idaho's agencies to provide wastewater treatment services, discussed in section 2.1 above, is sufficient to permit them to treat industrial wastes. Requiring pretreatment of industrial wastes is within the agencies' powers to the extent that pretreatment is necessary to protect the proper operation of their facilities. Absent such pretreatment the agencies would necessarily be empowered to refuse industrial wastes in order to protect their waste treatment function.

3.0 SUMMARY

Idaho's waste treatment agencies are in compliance with the studied provisions of the act. However, in some areas legislation would be advisable to explicitly grant the agencies powers currently only implied.

3.1 Deficiencies

Legislation should be enacted to explicitly authorize Idaho's cities and sewer districts to recover from industrial dischargers the federal portion of capital costs allocable to treatment of their wastes. Sanctions should be authorized which could be applied by the agencies to communities not in compliance with an areawide plan.

4.0 BIBLIOGRAPHY

1. Idaho Water Resources Research Institute and Division of Continuing Legal Education, University of Idaho, Short Course on Legal Aspects and Responsibilities for Allocation of Water Resources (1969).

2. "Water Pollution Control in Idaho, State and Federal Laws," 8 Idaho Law Review 94 (1971).

FOOTNOTES

1. I.C.A. § 39-104 (Cum. Supp. 1972).
2. Id.
3. I.C.A. § 39-107 (Cum. Supp. 1972).
4. I.C.A. § 39-105 (Cum. Supp. 1972).
5. Id.
6. I.C.A. § 39-107 (Cum. Supp. 1972).
7. Id.
8. Id.
9. I.C.A. § 39-109 (Cum. Supp. 1972).
10. I.C.A. §§ 36-1101, 36-1102 (1961).
11. I.C.A. §§ 47-1312, et seq. (Cum. Supp. 1972).
12. I.C.A. § 58-141 (Cum. Supp. 1972).
13. Sewer districts, I.C.A. §§ 42-3212, 50-1706 (Cum. Supp. 1972); cities, I.C.A. §§ 50-1030(c), 50-1706 (Cum. Supp. 1972), 50-315, 50-301 (1967).
14. Sewer districts, I.C.A. § 42-3212(d) (Cum. Supp. 1972); cities, I.C.A. § 50-301 (1967).
15. Sewer districts, I.C.A. §§ 42-3212(l) (Cum. Supp. 1972) 42-3213 (1948), 50-1717 (1967); cities, I.C.A. §§ 50-1032, 50-1717, 50-235, 50-236 (1967), 50-1030(e) (Cum. Supp. 1972).
16. Sewer districts, I.C.A. § 42-3212(n) (Cum. Supp. 1972); cities, I.C.A. §§ 50-302, 50-304 (1967).
17. Cities, I.C.A. §§ 50-237 (1967), 50-1020, 50-1026 Cum. Supp. 1972); sewer districts, I.C.A. §§ 42-3212(e), 42-3221 (Cum. Supp. 1972), 42-3225 (1948).
18. Cities, I.C.A. § 50-1028 et seq. (1967).
19. I.C.A. § 42-3221 (Cum. Supp. 1972).
20. I.C.A. § 50-1731 et seq. (Cum. Supp. 1972).
21. I.C.A. § 42-3212(d) (Cum. Supp. 1972).
22. I.C.A. §§ 67-2326 et seq. (1973).
23. I.C.A. §§ 50-1022 et seq. (1967).
24. I.C.A. §§ 42-3212(l), 50-1030(e) (Cum. Supp. 1972).
25. I.C.A. § 42-3212(l) (Cum. Supp. 1972).
26. I.C.A. § 50-1201 et seq. (1967).
27. I.C.A. § 50-1326 (Cum. Supp. 1972).

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OREGON REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies.

The agency charged with statewide water resources planning in Oregon is the State Water Resources Board. It is responsible for formulating "an integrated, coordinated state water resources policy."[1] However, its plan development is limited by stated legislative policies which place little emphasis on water pollution control.[2] Currently Oregon has no statewide structure of regional planning agencies for water pollution control.

The Environmental Quality Commission sets quality standards for the waters of the state.[3] The Department of Environmental Quality implements stream standards by issuing permits for operation or construction of facilities, either public or private, which discharge wastes into state waters.[4] The Department monitors waste discharges through monthly reports required of permit holders as to the nature and amount of their effluent discharges.[5] The State Board of Health, as a part of its responsibility for insuring the purity of water supplies for domestic use, must approve any sewage system to be built within the state,[6] as must the Environmental Quality Commission.[7]

The state level agencies mentioned above carry on investigation of water quality throughout the state as an adjunct of their water quality control functions.[8] Court enforcement, civil or criminal, of state water quality requirements is initiated through local courts by the state Water Resources Board, the State Board of Health and the Environmental Quality Commission through the offices of the Attorney General or local district attorneys.[9]

As with planning, water pollution control management functions have not been structured along regional lines.[10] Actual management of treatment facilities and sewage systems is exercised by a number of local governmental entities.[11] Of Oregon's two interstate river compacts, Oregon-California Goose Lake Interstate Compact and the Klamath River Basin

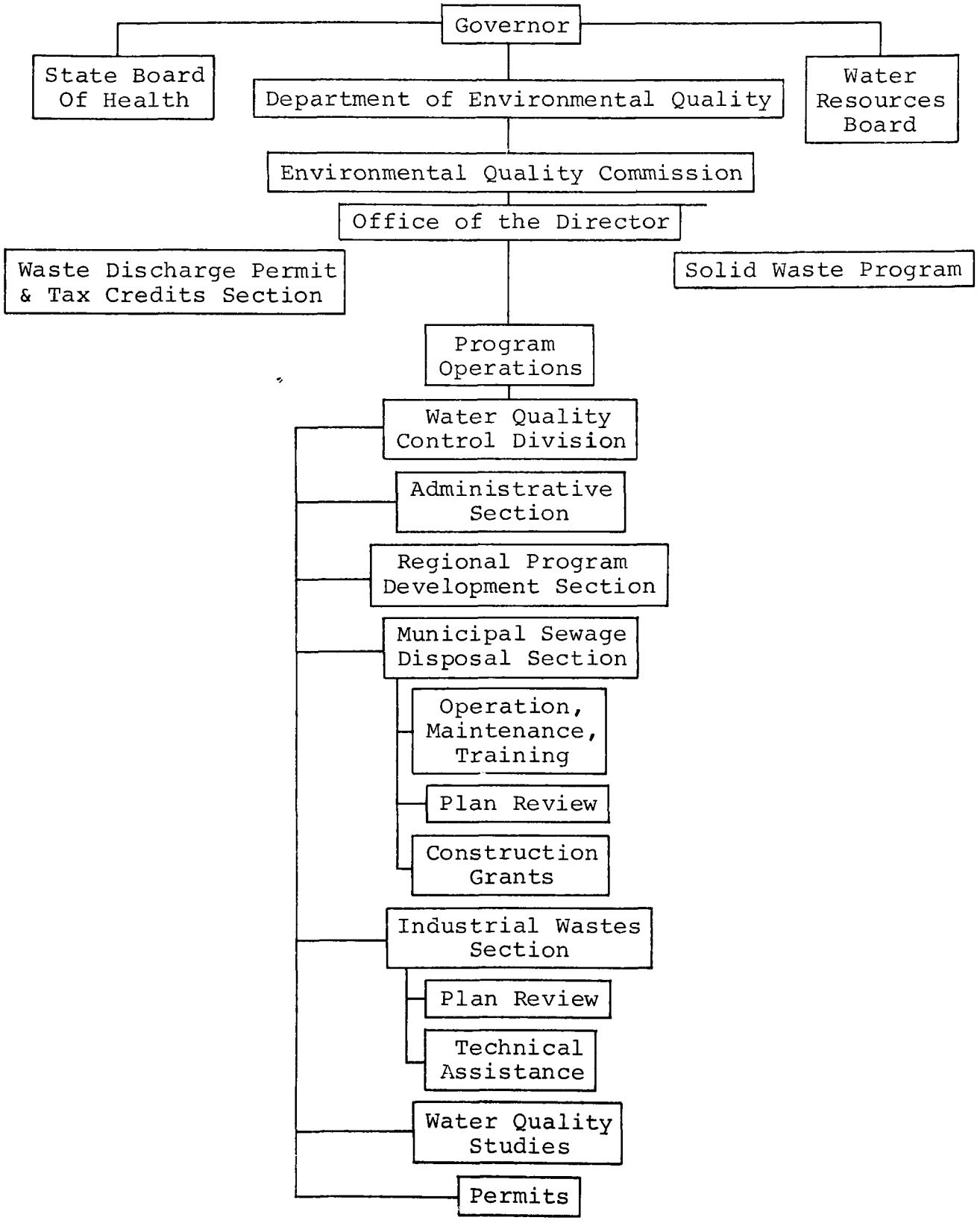
Compact,[12] only the Klamath River Basin Compact is specifically charged with a water pollution control function. The agreement, however, provides only for interstate action to identify and order abatement of polluting facilities within the river basin.[13]

The Department of Environmental Quality is authorized, as required by the Act,[14] to determine priorities for construction of wastewater management projects to be funded under the proposed amendment.[15]

The Governor may authorize state agencies to apply for, accept, and receive grants from any federal agency for federally sponsored projects deemed beneficial to the state. To the extent that federal regulations relating to such grants are not in conflict with Oregon Law, they shall be applicable. The governor may authorize a state agency to supervise disbursement of such funds. Expenditure of federal funds by the receiving agencies is limited by the requirement that expenditures be approved by the legislative assembly or the Emergency Board. This approval may be given prior to receipt of such funds if required by the terms of the grant.[16]

State agencies included within this authorization include any water pollution control agency at least a part of whose costs are paid from funds held in the state's general treasury.[17] Thus, local agencies, which are funded locally are not covered by the general grant provision. In addition to this general authorization provision, the State Water Resources Board, the Department of Environmental Quality, and the Environmental Quality Commission are all specifically authorized by statute to accept and use federal grants.[18] Most local agencies involved in wastewater management activities have been granted authority to accept and use federal grants. These include sanitary districts, Metropolitan Service Districts, towns and cities.[19] County Service facilities and Sanitary Authorities are authorized to accept and use federal grants for water pollution control through a general authorization to cooperate with the United States.[20]

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208 (c)(2)(C)].

Oregon's towns, cities, metropolitan service facilities, sanitary districts, and sanitary authorities are all authorized to construct, operate and maintain wastewater treatment systems.[21]

2.2 Authority to Accept and Utilize Grants, or Other Funds from Any Source, for Waste Treatment Management Purposes. [§208(c)(2)(D)].

Metropolitan service districts, towns and cities are authorized to accept and use federal grants.[22] County service facilities, sanitary districts, and sanitary authorities are so authorized by a general authorization to cooperate with the United States.[2] However, while this interpretation depends on an opinion of the state attorney general[24] the wording of the statute is sufficiently analogous to the wording of the Federal Act to provide compliance with that provision:

> May cooperate, by agreement or otherwise, with a unit of local government or a state agency of this or another state, or with the United States, or with a United States governmental agency.[25]

Additionally, the State Water Resources Board, The Department of Environmental Quality, and the Environmental Quality Commission are all specifically authorized by statute to accept and use federal grants,[26] and, in the cases of the Commission and the Board, they are required to use them in accordance with the terms and conditions under which they were made available.[27] Thus, in addition to specific grant acceptance capability of the state's local management agencies, the Board and Commission may also be used as a means of channeling grants for local or regional projects.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

All of Oregon's local wastewater management agencies are authorized to assess and collect user charges and taxes.[28]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of Any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

In addition to a general authority to assess and collect charges for waste treatment services, Oregon's local wastewater management agencies are further authorized to do all acts necessary and proper to effect their waste treatment functions and generally to pass regulations and ordinances for such purposes.[29] These grants of authority are sufficient to allow them to base their user charges on the volume, delivery flow and character of effluents treated. Therefore, they have authority to structure their charge schedules to assure that each category of user -- residential, commercial, or industrial -- will pay its appropriate share of the costs of operation and maintenance of waste treatment facilities.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no specific legislative authorization permitting such cost recovery. However, municipalities are authorized to enter into and perform contracts with industrial establishments for provision of waste treatment services, which contracts may include provision for payment by the industry of amounts sufficient to cover both operational and capital costs of the provision of such services.[30] Also, to the extent that such recovery is required under the terms of a federal grant, it is a cost which the management agency may recover. Though the classification on which such recovery is based is a reasonable one in terms of avoiding use of public funds to decrease costs of industrial users of waste treatment facilities, legislation would be advisable to explicitly authorize such a user charge element.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

The local agencies discussed herein all have authority to incur long-term debt,[31] though in the case of county service districts the county is the agency which actually issues bonds. Incorporated towns and cities, counties and county service districts may incur short term debt for limited purposes. Sanitary districts, sanitary authorities, and metropolitan service districts

lack specific authority to incur short-term debt, but their long-term authority is broad enough to encompass the capability to incur short-term indebtedness.

2.4.1 General Obligation Funding.

Incorporated towns and cities are authorized to issue general obligation bonds for construction of waste treatment facilities without a limitation on indebtedness.[32] Sanitary districts and sanitary authorities are also authorized to issue general obligation bonds, but subject to the limitation that the amount issued may not exceed 13% of the actual value of all assessable property within their jurisdictions.[33] Metropolitan service districts may issue general obligation bonds subject to a 10% limit,[34] and counties and county service districts subject to a 2% limit.[35]

2.4.2 Special Funds and Revenue Funding.

Incorporated towns and cities, metropolitan service districts, counties, and county service districts are all authorized to issue revenue bonds without a debt limit.[36] Issuance of such bonds by sanitary districts and sanitary authorities is subject to the same debt limit applied to general obligation issues.[37]

2.4.3 Other Methods of Financing

The state constitution and implementing statutes authorize the Environmental Quality Commission to sell general obligation bonds of the state to create a fund to be advanced to local waste treatment management agencies or state agencies for treatment facilities which are estimated to be 70% self-supporting from their revenues and from federal grants.[38] There is a fifty million dollar limitation on this authority.[39] These provisions are designed to ease the problem of financing the local share of the costs of development of waste treatment facilities.[40]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208 (c)(2)(G)].

Oregon's waste treatment management agencies, through the terms of their authority to assess user charges and to jointly exercise their powers, can comply with this requirement.[41]

2.6 Authority to Refuse to Receive Any Wastes from Any Municipality or Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of Oregon's waste treatment management agencies have specific authority to "cut off" service to municipalities being served by their facilities. Further, it is unlikely that such an action would be judicially regarded as being within the scope of their necessary and proper powers.[42] The authority, noted in section 1.1 above, of the Department of Environmental Quality to regulate waste discharges through the mechanism of discharge permits is essentially the power to refuse to receive wastes. Though this required power is possessed by a state regulatory agency rather than by a local management agency, the state is minimally in compliance with this requirement.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

Denial of service to communities lying outside their territorial jurisdictions is within the power of waste treatment management agencies. Their capability to do so with communities within their jurisdictions is more limited. Further, as the non-compliance involved in such cases will often be attributable to the agency itself, denying new "hook-ups" would not be a practical sanction.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

No sanctions exist which would be applicable to municipalities or subdivisions as the charge system and penalties for violation of ordinances were primarily designed to operate on individual violators. Further, where the violator is an unincorporated subdivision or community there is no single individual against which sanctions could be applied.

2.7 Authority to Accept for Treatment Industrial Wastes. [§208(c)(2)(I)].

The terms of the agencies authorizations to operate waste treatment systems[43] are broad enough to permit them to treat industrial wastes.

While no express authority exists for the local agencies to require pretreatment of industrial wastes, since such wastes could cause damage to equipment, the power can reasonably be implied from the general authority to maintain the disposal facilities.[44]

3.0 SUMMARY

Oregon's waste treatment management agencies are in compliance with the studied provisions of the Act. However, in certain areas enactment of legislation explicitly granting powers currently only implied would be advisable.

3.1 Deficiencies

Waste treatment management agencies should be clearly authorized to recover from industrial users the federal portion of capital costs allocable to treatment of their wastes. Sanctions should be clearly authorized which could be applied by the agencies to communities not in compliance with an areawide plan.

4.0 BIBLIOGRAPHY

1. Bateson, The Water Gap - And a New Approach to Its Solution, 45 Or. L. Rev. 278 (1966).

2. Department of Environmental Quality, Water Quality Control in Oregon (1970).

3. Gearhart, Special Districts -- Local Government's Unorganized Minority, 4 Willamette L.J. 482 (1967).

4. Hallmark, Oregon's Water-Management Districts, 47 Or. L. Rev. 16 (1967).

5. Bonney, Oregon's Coordinated Integrated Water Resources Policy., 3 Willamette L.J. 295 (1965).

6. Beaufait and Collins, Financing Pollution Control Facilities Oregon's Constitutional Amendment, 1 Environmental Law 92 (1970).

7. Staines, Waste Discharge Permits: No Defense to Water Pollution Actions, 2 Environmental Law 181 (1971).

FOOTNOTES

1. ORS §536.300.
2. ORS §536.310. These policies are restricted to the maintenance of minimum stream flows and the planning of water recreation facilities so as to safeguard against pollution.
3. ORS §449.086.
4. ORS §449.083.
5. ORS §449.083.
6. ORS §449.245.
7. ORS §449.395.
8. ORS §§449.215, 449.235, 449.082, 536.440, 536.520.
9. ORS §§449.055, 449.081, 449.097, 449.100, 449.103, 536.400. The State Board of Health exercises its enforcement function administratively, ORS §§449.225 et seq., as does the Department of Environmental Quality through its power over permits, ORS §449.083. See Staines, Waste Discharge Permits: No Defense to Water Pollution Actions, 2 Environmental Law 181 (1971).
10. Bateson, The Water Gap - And a New Approach to Its Solution, 45 Or. L. Rev. 278 (1966).
11. Sanitary Districts and Authorities, ORS §§450.075 et seq.; County Service Districts, ORS §§451.010 et seq.; Towns and Cities, ORS §§449.305 et seq., ORS §§224.010 et seq.; Metropolitan Service Districts, ORS §§268.010 et seq.
12. ORS §§542.510, 542.610.
13. ORS §542.610.
14. §204(a)(3).
15. ORS §449.092.
16. ORS §§293.550, 291.260.
17. ORS §291.002.
18. ORS §§536.500, 449.035, 449.695.
19. ORS §§224.150, 268.540, 449.410.
20. ORS §190.110; 28 opinions of the Attorney General 195.
21. ORS §§450.075, 451.550, 450.830, 224.210, 268.310.
22. ORS §§224.150, 268.540, 449.410.
23. ORS §190.110.
24. 28 Opinions of the Attorney General 195.
25. ORS §190.110.
26. ORS §§536.500, 449.035, 449.695.
27. ORS §§536.500, 449.695.
28. ORS §§450.075, 450.885, 451.490, 224.040, 268.500, 268.510, 450.130, 224.220, 450.840, 449.440, 451.500, 224.510, 268.540.
29. ORS §§224.020, 224.140, 450.075, 450.810, 450.815, 268.360, 451.550.

30. ORS §449.440. Gearhart, Special Districts - Local Government's Unorganized Minority, 4 Willamette L.J. 482 (1967).
31. ORS §287.404.
32. ORS §§449.410, 224.250.
33. ORS §§450.075, 450.095, 450.120, 450.895, 450.900.
34. ORS §268.520.
35. ORS §§287.054, 451.545.
36. ORS §§449.410, 224.230, 268.520, 450.895, 451.545.
37. ORS §§450.075, 450.095, 450.120, 450.895, 450.900.
38. Ore. Const. Art. XI - H, ORS §§449.670-695.
39. ORS §449.672.
40. Beaufait and Collins, Financing Pollution Control Facilities Oregon's Constitutional Amendment, 1 Environmental Law 92 (1970).
41. ORS §§450.075, 450.130, 224.220, 450.840, 450.855, 449.440, 451.490, 451.500, 224.220, 224.510, 268.510, 268.540, 190.010.
42. ORS §§224.020, 224.140, 450.075, 450.810, 450.815, 268.360, 451.550.
43. See statutes cited at note 21 supra.
44. Id.

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WASHINGTON REPORT
(1972)

1.0 OVERVIEW

1.1 Description of Existing Agencies

The agency responsible for water quality control in Washington is the Department of Ecology. It exercises this responsibility through its planning, regulatory, enforcement and grant management functions with respect to the waters of the state.

In the planning area, the Department is authorized to make studies dealing with all aspects of environmental problems either by itself or in cooperation with the federal government, other states or Canadian provinces. Absent legislative authorization, however, the Department may not implement such studies by its own action.[1] The Department is authorized to establish sewage drainage basins for purposes of comprehensive planning to control and abate water pollution within such basins.[2] The Department may require sewage treatment agencies to comply with comprehensive basin plans.[3] The Department is also charged with developing plans to protect the state's ocean shoreline.[4]

The Department has numerous regulatory functions. It is empowered to adopt rules and regulations necessary and appropriate to carry out its statutory responsibilities to the extent that such rules and regulations are consistent with known, available and reasonable methods of preventing pollution.[5] The Department sets water standards by determining what qualities and properties of water constitute a polluted condition.[6] Prior to discharging wastes into state waters, or even into municipal sewerage systems, industrial, commercial or municipal waste dischargers must obtain permits from the Department.[7] The Department may specify the conditions for issuance of permits. As an additional control on discharges of community wastes, the Department must approve plans for construction or improvement of sewerage systems.[8] The Department may delegate its permit granting authority to cities, towns, or other municipal corporations.[9] To insure that permit requirements are being met, agents of the Department are authorized to enter and inspect property of dischargers.[10]

In face of violations of its rules, regulations or orders, the Department has a number of enforcement options available. After

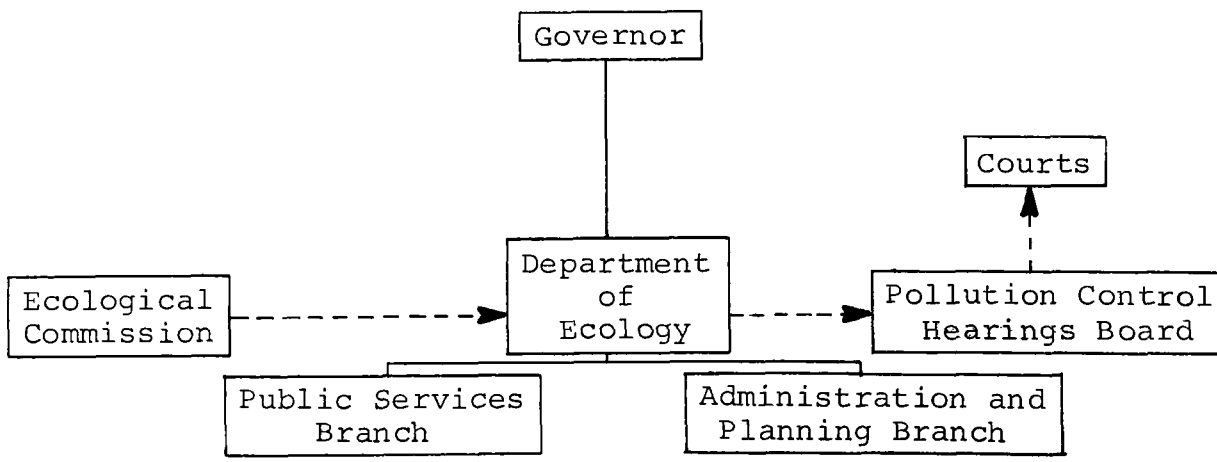
notifying the violator and giving an opportunity for a hearing, the Department may issue such orders as it deems appropriate.[11] Where a discharge or threatened discharge creates an emergency situation, the Department may order immediate discontinuance of such discharge or, through the attorney general's office, go to court to seek injunction or abatement.[12] Further, there are both civil and criminal penalties available, including fines of up to $100 per day of violation, in the event of violations of state statutes, or rules and regulations of the Department.[13]

The Department is designated as the state water pollution control agency for all purposes of the federal Water Pollution Control Act, and is authorized to take all action necessary to secure to the state the benefits of that act.[14] It is also authorized to render financial assistance to local treatment agencies in the form of state grants for the purpose of providing state matching funds for federal grants.[15]

Other agencies engaged in state-wide water pollution control are the Ecological Commission, acting to advise the Department on environmental matters and to approve its rules and regulations,[16] and the Pollution Control Hearings Board of the State which hears appeals from rules, regulations, orders, and decisions of the Department.[17]

Though subject to state level planning and regulation, as discussed above, waste treatment is primarily a local function carried out by Washington's cities, metropolitan municipal corporations (Seattle Metro), towns, and, within the counties, by sewer and water districts.

1.2 Schematic Diagram of Existing Agencies



2.0 ANALYSIS OF EXISTING STATE WASTE TREATMENT MANAGEMENT AGENCIES, INCLUDING THEIR POWERS AND AUTHORITIES, AS SUCH RELATE TO CERTAIN PROVISIONS OF §208(c)(2) AND SELECTED RELATED SECTIONS OF THE ACT.

2.1 Authority Directly or by Contract, to Design and Construct New Works and to Operate and Maintain New and Existing Works as Required by Any Areawide Plan. [§208(c)(2)(C)].

Washington's cities, metropolitan municipal corporations, towns, sewer districts and water districts are authorized to construct, directly or by contract, operate and maintain waste water treatment systems.[18]

2.2 Authority to Accept and Utilize Grants, or Other Funds From Any Source, For Waste Treatment Management Purposes. [§208(c)(2)(D)].

All of Washington's waste water treatment agencies are authorized to accept grants from any federal agency for, or in aid of, any public works project, and for drawings, surveys, engineering and other preliminary matters, and to make any contracts necessary for the furtherance of such projects.[19] Also, as discussed above in Section 1.1, they may receive state grants to cover the non-federally funded portion of such projects.

2.3 Authority to Raise Revenues, Including the Assessment of Waste Treatment Charges. [§208(c)(2)(E)].

Washington's waste treatment agencies are authorized to collect user charges for waste water treatment services and to levy both property taxes and special assessments.[20]

2.3.1 Each Category of User Will Pay Its Proportionate Share of the Costs of Operation and Maintenance (Including Replacement) of any Waste Treatment Services Provided by the Agency [§204(b)(1)(A)].

The user charge authorizations of cities, towns and sewer and water districts require that charges be uniform for the same class of service or customer. Factors listed in the authorizations for consideration in classifying customers or services are customer location, cost differences for different parts of the system, quantity, quality and rate of flow of effluent delivered, different character of service supplied to different

customers and any other matters presenting a reasonable ground for distinction.[21] Thus these agencies have clear authority to structure their charge schedules to assure that each category of user will pay its appropriate share of the costs of operation and maintenance of waste treatment facilities. The user charge authority of metropolitan municipal corporations is phrased in general terms.[22] However, such corporations are granted all powers necessary to carry out their functions.[23] To the extent that the volume character and rate of flow of effluents treated by metropolitan municipal corporations are necessary components of their charge schedules, they are empowered to so base their charges. Therefore, metropolitan municipal corporations are also authorized to insure that each category of user will pay its appropriate share of treatment costs.

2.3.2 Full Recovery Will Be Had from the Industrial Users of the Waste Treatment Works of the Federal Portion of the Construction Costs of Treatment Works Reasonably Attributable to Treatment of Such Industrial Wastes. [§204(b)(1)(B)].

There is no specific legislation for any of the agencies authorizing them to recover such capital costs from industrial dischargers. However, the classification on which such recovery is based is a reasonable one in terms of avoiding use of public funds to decrease the private costs of industrial dischargers. To the extent that such recovery is required under the terms of a federal grant, it is a cost which the agencies may recover. Further, the agencies are specifically authorized to comply with any rules and regulations made by the granting federal agency.

2.4 Authority to Incur Short- and Long-Term Indebtedness [§208(c)(2)(F)].

Each of Washington's waste treatment agencies is authorized to incur debt funded by general obligation or revenue bonds.[24] Metropolitan municipal corporations are specifically authorized to issue short term instruments.[25] The general authorizations of cities, towns, and sewer and water districts are broad enough to encompass incurring both short- and long-term indebtedness.[26]

2.4.1 General Obligation Funding.

All of Washington's waste treatment management agencies are authorized to issue general obligation bonds.[27] All such

agencies, except sewer districts, may issue general obligations bonds without submitting such action to a vote of their electorate where the resulting indebtedness of the agency will not exceed .75% (.5% for water districts) of the value of the taxable property within the agencies' territorial limits.[28] If issuance of bonds is approved by 60% of the electorate voting on the matter, the debt limit is 5% for cities, towns and metropolitan municipal corporations and 2.5% for sewer and water districts.[29]

2.4.2 Special Funds and Revenue Funding.

All of the agencies are authorized to issue revenue bonds, without a limitation on amount, to finance waste treatment facility construction.[30] No voter approval is required for issuance of revenue bonds by cities, towns, and metropolitan municipal corporations. Issuance of revenue bonds by sewer and water districts must be approved by a simple majority of the electorate voting on the matter.[31]

2.4.3 Other Methods of Financing.

Cities, towns, and metropolitan municipal corporations may also issue revenue warrants.[32] Cities and towns may additionally secure their revenue bonds by pledging special assessment revenues to their payment.[33]

2.5 Authority to Assure in Implementation of Its Waste Treatment Management Plan That Each Participating Community Pay Its Proportionate Share of Treatment Costs. [§208(c)(2)(G)].

While there is no express legislative authority for proportionate rates, all waste treatment agencies, through the terms of their authority to assess user charges,[34] should have sufficient authority to comply with this requirement. In addition, there is express authority for all cities, towns, or sewer districts to contract with any other such entity for joint operation or construction of sewage disposal facilities. The statute further provides that the parties to such an agreement shall pay such portions of the expenses as shall be agreed upon.[35]

2.6 Authority to Refuse to Receive Any Wastes From Any Municipality of Subdivision Thereof, Which Does Not Comply With Any Provisions of an Approved Plan Under §202 Applicable to Such Area. [§208(c)(2)(H)].

None of Washington's waste treatment agencies have specific authority to "cut off" service to municipalities or subdivisions

being served by their facilities. Further, it is unlikely that such an action would be judicially regarded as being within their necessary and proper powers.

2.6.1 Authority to Deny New or Additional "Hook-Ups" (Moratorium Effect).

There is no statutory requirement that Washington's waste treatment agencies connect their facilities with communities outside their jurisdictions. With respect to communities or subdivisions within their jurisdictions, the agencies are authorized to do all things necessary and proper to execute their waste treatment authority.[36] Thus, it would be within their power to refuse to connect such communities where their non-compliance with an areawide plan would result in damage to or overloading of treatment facilities. Where, however, the non-compliance of a municipality or subdivision within an agency's jurisdiction would not result in such damage or overloading, its authority to deny service is much more restricted, and, as the non-compliance would be legally attributable to the agency itself, invoking such a sanction would be a meaningless gesture. However, as discussed in Section 1.1 above, this authority is possessed by the state Department of Ecology through its power to regulate discharges to community wastes and to issue permits therefor, and this power may be delegated to the agencies.

2.6.2 Authority to Assess Penalties, Surcharges and Similar Sanctions Against Municipalities or Subdivisions Thereof Which Do Not Comply With the Areawide Plan.

No sanctions exist which would be applicable to municipalities as the charge system and penalties for violation of ordinances are designed to operate against individuals. Surcharges are permissible to the extent that they reflect increased treatment costs resulting from non-compliance, but the charge system is also designed to affect individuals rather than communities.

In the event of several municipalities joining together to provide sewer services, their agreement could provide for sanctions.

2.7 Authority to Accept For Treatment Industrial Wastes. [§208(c)(2)(I)].

The general authority of the agencies to provide waste treatment services is sufficient to permit them to treat industrial wastes. Requiring pretreatment of industrial wastes within

their power where such pre-treatment is necessary to protect the proper operation of their waste treatment facilities. Absent such pre-treatment, the agencies would necessarily be empowered to refuse industrial wastes in order to protect their waste treatment function.

3.0 SUMMARY

Washington's waste treatment management agencies are for the most part in compliance with the studied provisions of the Act. However, in certain areas legislation would be advisable to supply powers not possessed by the agencies or to explicitly grant powers currently only implied.

3.1 Deficiencies

The agencies should be clearly authorized to recover from industrial users the federal portion of capital costs allocable to treatment of their wastes. Sanctions should be authorized which could be applied by the agencies to communities not in compliance with an areawide plan.

4.0 BIBLIOGRAPHY

1. Water Pollution Control in Washington, 43 Washington Law Review 425 (1967).

2. 1971 Annual Report, Natural Resources and Recreation Agencies, State of Washington (1971).

3. Department of Ecology, Implementation and Enforcement Plan for Water Quality Regulations (1970).

4. Department of Ecology, Sewage Drainage Basin and Urban Area Planning Guide for Water Pollution Control and Abatement (2d ed. Sept. 1970).

5. E. H. Haskell, Managing the Environment: Nine States Look for New Answers 162 (1971).

FOOTNOTES

1. RCWA §§43.21A.130, 43.21A.150 (Supp. 1972).
2. RCWA §90.48.270 (Supp. 1972).
3. RCWA §90.48.280 (Supp. 1972).
4. RCWA §§90.58.010 et seq.
5. RCWA §§43.21A.080, 90.48.035 (Supp. 1972).

6. RCWA §90.48.070 (1962).
7. RCWA §§90.48.160, 90.48.144 (Supp. 1972).
8. RCWA §90.48.110 (Supp. 1972).
9. RCWA §90.48.165 (Supp. 1972).
10. RCWA §90.48.090 (1962).
11. RCWA §90.48.120 (Supp. 1972).
12. RCWA §§90.48.240 (Supp. 1972), 90.48.060 (1962).
13. RCWA §§90.48.140, 90.48.142 (Supp. 1972), 90.48.144 (Supp. 1972).
14. RCWA §§90.48.260, 43.21A.150 (Supp. 1972), 90.48.153 (1962).
15. RCWA §§90.48.285, 90.48.290, 90.50.020 (Supp. 1972).
16. RCWA §43.21A.190 (Supp. 1972).
17. RCWA §43.21B.110 (Supp. 1972).
18. Cities and Towns, RCWA §§35.92.020, 35.67.020, 35.21.010, 35.23.352, 35.43.190 (Supp. 1972), Metropolitan Municipal Corporations, RCWA §§35.58.050, 35.58.180 (1965); Sewer Districts, RCWA §§56.08.010, 56.08.060 (1962), 56.08.020, 56.08.070 (Supp. 1972); Water Districts, RCWA §57.08.065 (Supp. 1972).
19. RCWA §§39.28.020, 39.28.040 (1972).
20. Cities and Towns, RCWA §§35.30.020, 35.30.010(1), 35.30.030, 35.67.110, 35.23.440(49), 35.24.340, 35.24.350, 35.24.380, 35.27.370(8), 35.43.010, 35.23.440(38), 35.23.440(50), 35.92.020, 35.67.020 (1965), 35.92.080, 35.22.280(2), 35.22.280(10), 35.22.280(13), 35.41.080, (Supp. 1972); Metropolitan Municipal Corporations, RCWA §§35.58.090, 35.58.500 (1965), 35.58.200(4) (Supp. 1972); Sewer and Water Districts, RCWA §§56.16.040, 56.20.010, 56.16.090 (1962).
21. RCWA §§35.92.020 (1965), 56.16.090 (1962).
22. RCWA §35.58.200(4) (Supp. 1972).
23. RCWA §35.58.180 (Supp. 1972).
24. Cities and Towns, RCWA §§35.30.060 (1965), 35.37.040, 35.22.280(4) (Supp. 1972), 35.41.030 et seq. (1965 & Supp. 1972); Metropolitan Municipal Corporations, RCWA §§35.58.450 (Supp. 1972), 35.58.490 (1965), Sewer and Water Districts, RCWA §§56.16.010, 56.16.020, 56.16.035, 57.16.020, 57.16.030 (1962), 57.20.010, 57.20.020 (Supp. 1972).
25. RCWA §§35.92.100 (Supp. 1972), 35.58.490 (1965).
26. See statutes for those agencies cited in note 24 supra.
27. Cities and Towns, RCWA §§35.37.040, 35.22.280 (Supp. 1972), 35.37.050 (1965). Metropolitan Municipal Corporations, RCWA §35.58.450 (Supp. 1972); Sewer and Water Districts, RCWA §§56.08.050, 56.16.010, 56.16.040 (1962).
28. Cities and Towns, RCWA §39.36.020 (1972), Metropolitan Municipal Corporations, RCWA §35.58.450 (Supp. 1972); Water Districts, RCWA §57.20.120 (Supp. 1972); The State Constitution provision on which these statutory provisions are based is Article VIII Section 6 Amendment 27.

29. Cities and Towns, RCWA §39.36.020 (1972), Metropolitan Municipal Corporations, RCWA §35.58.450 (Supp. 1972), Sewer and Water Districts, RCWA §§57.16.020 (1962), 57.20.120, 56.16.050, (Supp. 1972).
30. Cities and Towns, RCWA §§35.41.010 et seq. (Supp. 1972) Metropolitan Municipal Corporations, RCWA §35.58.460 (Supp. 1972); Sewer and Water Districts, RCWA §§56.16.020, 56.16.070 (1962), 57.20.010 (Supp. 1972); See also 1973 Regular Session Laws Chapter 132 for an act authorizing revenue bonds for construction of pollution control facilities.
31. RCWA §§56.16.020, 57.16.030 (1962).
32. RCWA §§35.41.050, 35.58.490 (1965).
33. RCWA §35.41.095 (Supp. 1972).
34. See statutes cited in notes 21 and 22 supra.
35. RCWA §35.67.360 (1965).
36. Cities and Towns, RCWA §§35.22.280 (Supp. 1972), 35.23.440, 35.24.290, 35.27.370, 35.30.010 (1965); Metropolitan Municipal Corporations, RCWA §35.58.360 (1965); Sewer and Water Districts, RCWA §§56.08.020 (Supp. 1972), 57.08.060 (1962).

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