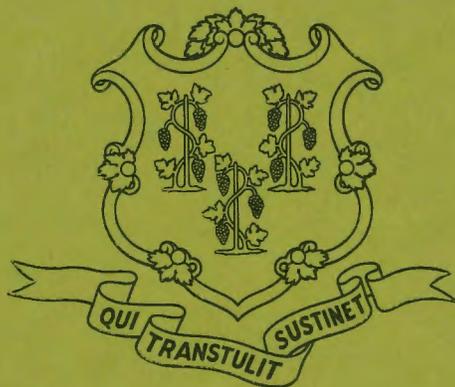


Connecticut General Assembly



**Legislative Program Review
and Investigations Committee**

**AN INVESTIGATION OF
THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

December 21, 1976

CONNECTICUT GENERAL ASSEMBLY

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, standing committee of the Connecticut General Assembly. It was established in 1972 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements where indicated (Public Act 72-90). In 1975 the General Assembly expanded the Committee's mandate to include investigations and changed its name to the Legislative Program Review and Investigations Committee (Public Act 75-388).

The Committee is composed of twelve members (listed below), three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

A list of the studies completed by the Committee to date appears at the end of this Report.

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**AN INVESTIGATION OF
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December 21, 1976

Brief History of the Department of Environmental Protection

- 1971 - P.A. 71-872 authorizes establishment of the State Department of Environmental Protection (DEP). The new department is primarily a consolidation under one Commissioner of existing environmental agencies and offices operating in the Department of Agriculture and Natural Resources and the Department of Health.
- October 1, 1971 - Daniel Lufkin is appointed the first Commissioner of DEP by Governor Thomas Meskill.
- July 1, 1973 - Douglas Costle, Deputy Commissioner of Environmental Quality at DEP, is appointed Acting Commissioner following the resignation of Daniel Lufkin.
- August 24, 1973 - Costle is appointed Commissioner of DEP by Governor Meskill.
- January 31, 1975 - Governor Ella Grasso announces the appointment of Joseph N. Gill as Commissioner of DEP. Gill is a former Commissioner of the Department of Agriculture and Natural Resources.
- March 3, 1975 - Gill is sworn in as DEP Commissioner and officially takes office.

AN INVESTIGATION OF
THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Table of Contents

Introduction.....	1
Departmental Reorganization.....	3
Findings.....	3
Resolving Conflicts in Testimony.....	7
Compliance with the Uniform Administrative Procedure Act.....	8
Legal Effect of DEP's Reorganization.....	11
Firing of DEP's Legal Staff.....	12
Inland Wetlands Program.....	14
Summary of Legislative Mandate.....	14
Technical Assistance to Towns.....	14
Program Administration: Case Reviews.....	18
End Note.....	27
Summary of Findings and Recommendations.....	29
Exhibits	

INTRODUCTION

Authorization for This Investigation

During the 1976 legislative session, the Environment Committee of the Connecticut General Assembly began an investigation to determine if the Department of Environmental Protection (DEP) was adequately carrying out its legislative mandate. After conducting three days of public hearings and compiling considerable information, the Committee identified several major areas of concern deserving further study (see Exhibit 1).

The Environment Committee thought that the Legislative Program Review and Investigations Committee, with full-time non-partisan staff, would be better able to follow through on a thorough and objective inquiry. Therefore, on June 25, 1976, the Environment Committee unanimously voted to request the Joint Committee on Legislative Management to direct the Legislative Program Review and Investigations Committee to investigate DEP. Legislative Management approved this request August 3, 1976.

Scope and Method

In considering the Environment Committee's request, it was necessary to determine which concerns about DEP should be covered under the purview of an "investigation." The Legislative Program Review and Investigations Committee decided that for purposes of conducting the DEP investigation only, those issues and areas of concern which could be addressed from the perspective of compliance with state and federal statutes would be included within the scope of the investigation. Most of the Environment Committee's concerns fall within this scope.

Initially, three major issues were selected for investigation: (1) restructuring of organizational units and staffing (compliance with the Uniform Administrative Procedure Act, Sec. 4-166-4-189); (2) Inland Wetlands Program administration and technical assistance to towns (compliance with the Inland Wetlands and Water Courses Act, Sec. 22a-36-22a-45); and (3) preparation of the transportation control plan and reversals on state highway construction projects (compliance with the federal Clean Air Act and state mandate, Sec. 22a-1).

This report covers the first two issues: organizational restructuring and inland wetlands. A cursory review of the third issue, compliance with the federal Clean Air Act, indicated that it would be more appropriately treated as a program review. Two staff persons were assigned full-time to the investigation beginning October 1. Surveys were sent to all DEP employees

(Exhibit 2), to all employees laid off by the Department in January, 1976, and to all local Inland Wetlands agencies (Exhibit 3). In addition, numerous interviews were conducted and relevant documents were examined.

The Legislative Program Review and Investigations Committee wishes to thank DEP Commissioner Joseph N. Gill and his staff for the excellent cooperation received throughout this investigation.

DEPARTMENTAL REORGANIZATION

Findings

Upon assuming office on March 3, 1975, the new Commissioner of the Department of Environmental Protection, Joseph N. Gill, moved immediately to restructure organizational units and to institute major personnel changes.

To assist him in reorganizing DEP, Commissioner Gill requested help from the Management Section of the Department of Finance and Control. Gill and George Russell, a long-time associate who served under former Commissioner Douglas Costle as DEP's Assistant Director of Information and Education, met briefly on March 7, 1975 with Fred Schuckman (Director of Management) and Frank Gentile (Principal Management Analyst), to discuss how Finance and Control could be of assistance. According to Schuckman, it was decided that "a quick, informal review was all that was needed to set a general direction for reorganization." Gill designated Russell as his liaison to Finance and Control.

On March 11, Frank Gentile met with three DEP employees to discuss reorganization: George Russell, Joseph Hickey (a Planner 3 in the Planning and Research Unit), and Edward Daly (Chief of the Wetlands Preservation Program). All three were former colleagues of Gill's when he served as Commissioner of Agriculture and Natural Resources, parts of which were merged into DEP when it was created in 1971.

At the time of Gill's request for assistance from Finance and Control, Frank Gentile had a very heavy workload and did not have time to conduct a thorough analysis of his own. As a result, he relied to a large extent on ideas supplied by the DEP staff. At the March 11 meeting, Gentile and the DEP staff discussed a variety of organizational changes including: (1) transfer of Water and Related Resources from the Division of Conservation and Preservation to the Division of Environmental Quality, (2) consolidation of planning functions operating in separate units, (3) transfer of the land acquisition function to the Commissioner's office, (4) creation of a staff position giving support to the Commissioner, and (5) coordination of regions in the Division of Conservation and Preservation.

"Econuts" memo. Sometime after Gentile met with the DEP staff, he received an interdepartmental envelope containing three anonymous documents discussing DEP structure and personnel. While sources disagree on this point (see next section), testimony was given indicating that Gentile received the memos the day after meeting with the DEP staff.

The three memos were all written by DEP personnel. The first memo, entitled A Budgetary Critique of DEP (sometimes referred to as the "Econuts Memo"), was written by Joseph Hickey (planner). The memo characterizes DEP as "a product of the Age of Environmental Hysteria." The document recommends "tight budget control," "some reorganization" and "selected firings and downgradings" of personnel. The following statements are some of the comments in the document regarding specific units:

Central Office - A prime example of top heavy bureaucracy, empire-building...Also containing the key concentration of Econuts, or environmental radicals, including lawyers working outside the AG....

Planning and Research - Overblown, unproductive hotbed of Econuts. Should be replaced with a 4-man Planning Section...and perhaps a 4-man Technical Services Section in Office of Deputy Commissioner of Environmental Quality....

Natural Resources Center - A fast-growing Ivory Tower whose actively Republican Director needs his wings clipped....

General Counsel - A legal operation duplicating statutory role of AG...This should be eliminated with its role assumed by the AG which could hire selected survivors....

Solid Waste - Major alterations here should consist of terminating the Director, a Costle-Beck henchman and his cronies....

Land Acquisition - A sloppy, poorly administered unit which needs major reorganization, possibly involving a split into a Land Acquisition Unit in the Central Office... and housekeeping type Property Management Unit in the Division of Conservation and Preservation.

Water and Related Resources - A large-scale empire-building operation and a hotbed of environmental radicals. Very poorly administered and unresponsive to the public. Sharp reduction in staff needed to weed out undesirables and allow opportunity for restructuring of this key Unit.

The second memo sent anonymously to Gentile was written by George Russell. In the last three pages of the document, Russell criticizes the administration of DEP under its previous commissioners:

"The DEP as initially directed by Dan Lufkin and later by Douglas Costle, has gained a reputation for arrogance, extreme partisanship, contempt for and severe abuse of the State Merit System, excellent relations with the news media and a poor record for productivity....

...[the DEP] came into being under an administration which was hostile to, and contemptuous of the previous administration and the career employees who had worked under it and who were incorporated into it when DEP was created in 1971. Many capable, conscientious employees were forced out of state service through early retirements, inordinate pressure, and downgradings with severe cuts in salary."

In his critique, Russell describes the DEP as insolent, indifferent and hostile to towns, industries and citizens affected by its actions. He characterizes former Commissioner Costle as "clearly Meskill's man" whose "policies are designed to enhance the position of the GOP and to run down the Democrats wherever possible."

Plans and recommendations from people inside the Department were being developed well before Gill took office in March, 1975. Hickey's Budgetary Critique was prepared in January or February 1975 and distributed anonymously to the Governor's Office and legislative leadership offices at the State Capitol. Russell's report was written soon after the gubernatorial election in November, 1974, and similarly distributed to offices at the Capitol. Both documents were unsolicited and expressed the strong and sincere feelings of two employees who believed they and others had been unfairly treated by the previous administration. Russell had been downgraded in pay and removed from his previously held position as Director of Central Services--Agriculture and Natural Resources.

The third document, dated February 18, 1975, was prepared by Robert Rubino, Assistant Director of Air Compliance, following a request from Hickey and Russell, who were privately discussing DEP organization and personnel with selected employees in early 1975. Rubino hand-delivered a confidential copy of his memo which called for several personnel changes to Hickey's office. The three memos were transmitted anonymously to Frank Gentile by Hickey.

Both Hickey and Russell stated that Commissioner Gill did not receive and was not aware of the memos prior to their public disclosure in the Spring of 1976. Gill stated that he "did not recall" receiving copies of the memos.

After Gentile received the three memos, he read them and put them in his files. It cannot be clearly determined how much influence, if any, the memos had on Gentile's thinking when he prepared his report. While Gentile claims they had no influence (he considered them "irrational"), testimony before the Environment Committee on June 14, 1976 suggests otherwise. According to the hearing transcript, Senator Harold Hansen, Committee Co-Chairman, talked to Gentile the morning of the hearing and asked him if the documents he received were used in preparing his subsequent report. According to Hansen, Gentile said that "even though he didn't really use them as reference materials, he had, in fact, read them and they were in his mind, they had some influence on him and he acknowledged that he could not just put them aside." (transcript of public hearing testimony, June 14, 1976, p. 21)

Gentile's report and recommendations on organizational structure were forwarded to Commissioner Gill in a memo dated April 1, 1975. However, Gentile says that the report, which is not one of his typical management analyses in method or style, was dictated and ready before that date. The report represents what he described as a "consensus" of thinking, rather than an original and detailed analysis by Gentile or his staff.

The Gentile report recommends several changes, some of which, coincide with the anonymous recommendations in the DEP staff documents. Suggestions included: (1) transfer of Land Acquisition to a staff function under the Commissioner, (2) combining technical planning activities as a staff function under the Deputy Commissioner of Environmental Quality, (3) transfer of Water and Related Resources to the Environmental Quality Division, and (4) creation of a position of Chief Administrative Officer to supervise and integrate staff services of DEP's two major divisions. The first two recommendations had been specifically mentioned in Hickey's Budgetary Critique.

By April 1, Russell had already assumed responsibilities as the Commissioner's Chief of Central Services, a position he had held in the Department of Agriculture and Natural Resources.

Other organizational and personnel changes consistent with the Gentile report began to be implemented in June, 1975. By this time, legal staff had already been laid off and reassignment of administrative personnel had begun (see p. 9).

Commissioner Gill formally submitted his reorganization plan to Governor Grasso on July 28, 1975. Gill's official plan called for three specific changes: (1) establishment of a Central Planning and Coordination Unit to replace the Planning and

Research Unit, (2) transfer of Water and Related Resources functions to the Division of Environmental Quality and establishment of a new unit called "Water Resources" to administer regulatory programs (including inland wetlands), and (3) transfer of the land acquisition function to the Central Office.

Failure to obtain necessary authorizations. As part of his reorganization plan, Gill submitted several proposed personnel changes requiring approval by the State Personnel Policy Board and the Department of Finance and Control. The plan included creation of the following positions: (1) Director of Staff Services, (2) Director of Planning and Coordination, (3) Principal Ecologist, (4) Environmental Protection Real Property Unit Chiefs for Open Space Acquisition and Land Management and Survey, and (5) Environmental Protection Assistant Real Property Unit Chief.

On an interim basis, Gill had already appointed George Russell as Director of Staff Services and Joseph Hickey as Director of Planning and Coordination. Edward Daly was appointed Director of Water Resources, a position which did not previously exist and was not officially submitted as part of the reorganization plan. Although assuming new responsibilities, Hickey and Daly remained in their previous positions for payroll purposes. Russell had been reassigned to his job as Director of Central Services, a position re-established after Gill took office.

In November, 1975, the State Personnel Policy Board approved the two new positions in Land Acquisition. However, no official action was ever taken by the Board on the other proposed positions. Thus, the positions of Director of Staff Services, Director of Planning and Coordination, Director of Water Resources, and Principal Ecologist have not been approved, as required by Sec.5-200 of the State Personnel Act.

Resolving Conflicts in Testimony

In piecing together the story of DEP's reorganization, several conflicts in testimony developed. As mentioned in the previous section, it could not be clearly determined exactly when the anonymous memos written by DEP personnel arrived on Frank Gentile's desk or what influence they may have had on his report. According to Senator Harold Hansen, the memos arrived before Gentile wrote his report, dated April 1, 1975. Three other persons testified that Gentile told them in June, 1976, that the memos arrived the day after he met with the DEP staff in March, 1975. When initially interviewed by the LPR&IC staff, Gentile stated that he did not recall receiving the memos until after he wrote his report. When subsequently interviewed, however,

Gentile said that he could not remember exactly when the memos arrived.

Considerable conflicts in testimony developed over authorship and knowledge of the anonymous memos. Robert Rubino testified that he was asked to write up his comments by George Russell and Joseph Hickey. After preparing his report, dated February 18, 1975, he hand-delivered it to Hickey's office.

In a statement submitted to the LPR&IC on October 12, Gill stated that he had not seen the memos before they were presented to him in June, 1976, nor did he know who the author(s) were. Hickey and Russell were interviewed by LPR&IC staff on November 22, 1976. When Hickey was asked to comment on the chronology of events surrounding Rubino's memo and his own authorship of the Budgetary Critique, he would neither confirm nor deny the story, expressing concern that he would become a "scapegoat."

In a separate interview, Russell denied any knowledge of the three memos prior to their public disclosure and stated that he did not know their authors.

However, on the morning of November 26, 1976, Russell called the LPR&IC office to arrange a meeting. At this meeting, he and Hickey admitted authorship of their respective memos. Unlikely as it may seem, both declared at this meeting that the Commissioner had not received a copy of the memos nor did he know until that day (November 26, 1976) who the authors were.

On December 1, 1976, Governor Grasso announced Commissioner Gill's resignation, effective January 1, 1977.

Compliance with the Uniform Administrative Procedure Act

In 1971, the General Assembly enacted the Uniform Administrative Procedure Act (UAPA, C.G.S. 4-166-4-189). The UAPA applies to state agencies, departments, and officers authorized by law to make regulations (4-166(1)). Under C.G.S. 22a-6 the Commissioner of Environmental Protection is authorized to make regulations and is therefore subject to the statutory requirements contained in the UAPA.

The Act defines a regulation to include each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization (4-166(7)).

In addition to other regulation-making requirements imposed by law, each agency shall adopt as a regulation a description of its organization stating the general course and method of its

operations (4-167a). DEP regulations complying with the UAPA became effective on October 19, 1972, under then Commissioner Daniel Lufkin. These regulations describe an organizational structure for DEP which includes an Assistant Commissioner of Policy Planning and Research (22a-2-5), a Director of Land Acquisition (22a-2-17) and a Director of Water and Related Resources (22a-2-19), and are still legally in effect.

UAPA requirements. Prior to the adoption, amendment or repeal of any regulation, DEP must give at least twenty days notice of its intended action and the time when, the place where and the manner in which interested persons may present their views. Such notice must be published in the Connecticut Law Journal (4-168).

DEP action. The following paragraphs provide a limited chronology of Commissioner Gill's restructuring of DEP's Water and Related Resources Unit, Planning and Research Unit, and Land Acquisition Unit.

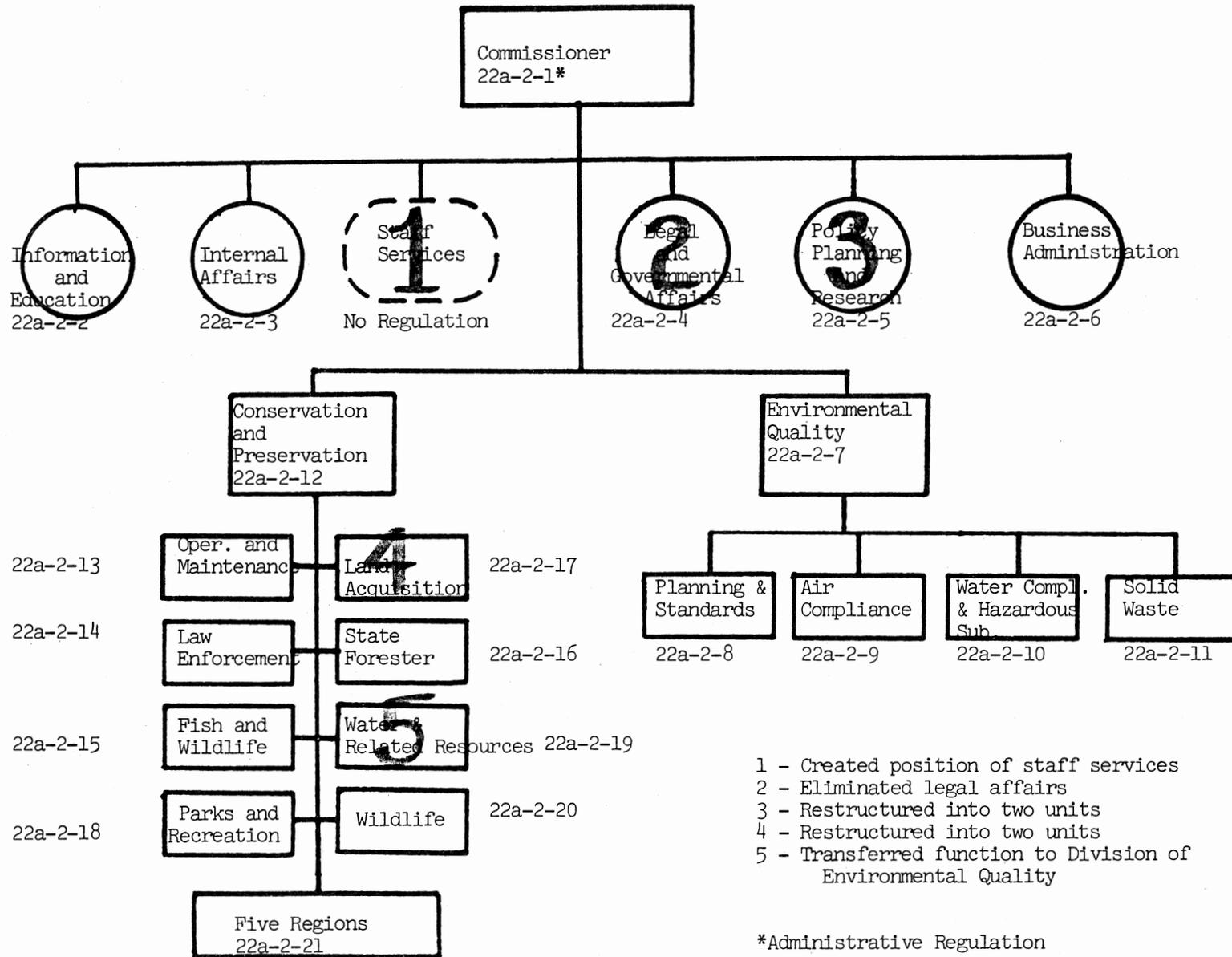
Three months after taking office (June 10, 1975), Commissioner Gill transferred the Water and Related Resources Unit from the Division of Conservation and Preservation (see regulation 22a-2-19) to the Division of Environmental Quality. On August 7, 1975 Commissioner Gill reorganized this unit further and retitled it "Water Resources" (see Figure 1).

On August 7, 1975 the Planning and Research Unit was "phased out" and two units, "Environmental Quality Technical Services" and the "Central Planning and Coordination Unit," replaced its functions as described in Regulation 22a-2-5.

Commissioner Gill reorganized the Department's Land Acquisition Unit on October 2, 1975 (see Regulation 22a-2-17). Land Acquisition was transferred in function and staff from the Division of Conservation and Preservation to a Director of Staff Services in the Commissioner's Office. The Director of Staff Services function is not described in any departmental regulation. The new unit was retitled the "Open Space Acquisition Unit." The remaining staff were transferred to another new unit entitled "Property Management." This unit remained under the supervision of the Division of Conservation and Preservation.

According to George Russell, at no time prior to the DEP reorganization did Commissioner Gill or his top staff discuss the Uniform Administrative Procedure Act as to its effect on the reorganization. Likewise, the Department of Finance and Control, requested to assist DEP in its reorganization, did not bring to the attention of DEP staff the need to comply with the UAPA.

Figure 1. Reorganization of DEP: 1975



Major organizational changes such as those instituted by DEP in 1975 require a repeal (or amendment) of existing regulations and the adoption of new regulations. The Uniform Administrative Procedure Act (C.G.S. 4-168) requires the Commissioner to give the public twenty days notice of his intended action, to provide the public the opportunity to present their views, and to publish such notice in the Connecticut Law Journal. None of these requirements was met in the reorganization of DEP.

Finally, no regulation may be adopted, amended, or repealed by DEP until it is first approved by the Attorney General and the legislature's Regulation Review Committee (C.G.S. 4-168). None of DEP's organizational changes have been submitted or approved by either the Attorney General or the Regulation Review Committee.

The LPR&IC finds that the 1975 restructuring of the Department of Environmental Protection was a major reorganization. Therefore, because the Commissioner did not promulgate regulations which were in "substantial compliance" with Sec. 4-168(c) of the Uniform Administrative Procedure Act, the LPR&IC finds that the 1975 DEP reorganization is invalid.

Legal Effect of DEP's Reorganization

The propriety of DEP's reorganization is presently being challenged by eighty-two Milford residents in the Court of Common Pleas for New Haven County.*

The Department's regulations (22a-2-19) specify that the state's wetlands programs shall be managed by a "Director of Water and Related Resources," a unit which is organized under the Deputy Commissioner of Conservation and Preservation (22a-2-12). In June of 1975, Commissioner Gill transferred the Water and Related Resources Unit to the Division of Environmental Quality and retitled it "Water Resources." Commissioner Gill then named Edward J. Daly Director of the "Water Resources" unit and offered the existing Director of "Water and Related Resources," E. Zell Steever, a new but unapproved classified position.

No regulations were promulgated to effectuate the change of organizational units. Furthermore, Commissioner Gill has not even requested the State Personnel Policy Board to approve Mr. Daly's or Mr. Steever's "new" positions. According to DEP personnel records, Mr. Daly remains classified as "Chief of Wetlands Preservation Program" and reports to the "Director of Water and Related Resources," E. Zell Steever (currently on leave of absence in Washington, D.C.).

* Docket No. 105027-3 Borgensen, et al. vs. Gill, et al.

The Milford suit claims that all actions undertaken by the "Water Resources" unit, including its rulings and orders, are invalid and without legal effect. The complaint further alleges that its "Director," Edward Daly, lacked the legal authority to act in a position which was created in derogation of duly adopted regulations and the State Personnel Act. The Milford suit, if successful, could result in similar challenges of other DEP decisions rendered since the Department's reorganization.

Firing of DEP's Legal Staff

One of Commissioner Gill's most controversial decisions was the firing of seven of his department's nine lawyers on April 30, 1975. The remaining two attorneys (both federally funded) were transferred to administrative positions. Commissioner Gill stated that the lawyers were fired because the Attorney General is charged by statute (C.G.S. 3-125) to provide legal advice and assistance to state agencies. Previous DEP Commissioners had utilized the Attorney General only with respect to court appeals resulting from administrative hearings.

Basis for DEP Legal Staff

The Commissioner of Environmental Protection is authorized to retain and employ independent legal consultants and assistants for the purpose of rendering legal assistance and advice (C.G.S. 22a-4). The Department's regulations (22a-2-4) specify an office of Assistant Commissioner of Legal and Governmental Affairs. Only two months before Gill took office, then Commissioner Douglas M. Costle outlined to Attorney General Carl R. Ajello the basis for maintaining DEP's legal staff.

Rulemaking. According to Costle, the Attorney General's staff cannot provide research, drafting, or representation services with regard to the preparation and adoption of administrative regulations. Instead the Attorney General has a specific statutory duty (C.G.S. 4-169) to review and approve for legal sufficiency all administrative regulations submitted under the UAPA. Because any participation by the Attorney General's staff on drafting regulations could be construed to compromise the impartiality of their statutory review, this drafting function should be performed by independent legal counsel.

Hearing officers. All contested DEP cases are heard on an administrative level by hearing officers who are responsible only to the Commissioner. Previous commissioners assigned this function to in-house counsel. The Attorney General's staff do not and cannot act as hearing officers.

According to Costle, the Attorney General's ability to represent the Department in subsequent court appeals could be substantially compromised if members of his staff became party to the Commissioner's decision-making process by acting as hearing officers. It appears that the Attorney General should not act as judge on the administrative level and serve as counsel on the appeal level relative to the same case.

Representation of staff before hearing officers. There is a serious need for DEP's technical staff to be represented by counsel before administrative hearing officers. Ethical considerations prevent the Attorney General's office from performing this function. For example, if an Assistant Attorney General were to take an active part in staff preparation of cases, he would be prevented from consulting with the Commissioner later under the UAPA's bar (C.G.S. 4-181) against ex parte communications. Further, if the Attorney General's staff were to formally participate in the disposition of administrative cases, they could be called as witnesses in subsequent appeals while they are simultaneously representing the Department. In this case, the Attorney General would be required by the Lawyer's Code of Professional Responsibility (DR-5-101,102) to withdraw as counsel.

The LPR&IC recommends that DEP retain independent, in-house counsel to aid in carrying out the regulatory functions of the Department.

INLAND WETLANDS PROGRAM

Summary of Legislative Mandate

In 1972, the Connecticut General Assembly enacted the "Inland Wetlands and Water Courses Act" (C.G.S. 22a-36 through 22a-45). The Legislature found the inland wetlands and water courses of the state to be "an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed" (C.G.S. 22a-36). The Legislature noted that many inland wetlands had been destroyed or are now in danger of destruction because of unregulated use such as the filling, deposition or removal of material. Therefore, the Act requires a permit to conduct such "regulated" activities in an inland wetland. The Commissioner of Environmental Protection is specifically required to "advise, consult and cooperate with other agencies...and with persons and municipalities in furtherance of the purposes" of this legislation (C.G.S. 22a-39(c)). In this regard, he is further mandated to employ consultants and assistants for rendering legal, financial, technical or other assistance. Such assistance includes the completion of state soil surveys and making on-site interpretations, evaluations and findings as to soil types (C.G.S. 22a-39(e)).

Technical Assistance to Towns

The Legislative Program Review and Investigations Committee conducted a survey of local agencies administering the Inland Wetlands Program. In the survey, mailed to 147 towns (the state currently administers the program in 22 towns), local agencies were asked to evaluate the technical assistance provided to them by the State Department of Environmental Protection (see Exhibit 3).

Seventy-two, or nearly half of the towns, responded to the survey. Twenty-three of the towns responding indicated that they had never requested technical assistance and, therefore, did not complete the survey.

Responses to the survey questions were tabulated. Open-ended comments by each town were coded as either favorable (positive) or unfavorable (negative) and relevant to either the present administration (under Commissioner Gill) or to previous administrations prior to 1975.

Most of the agencies responding to the survey report satisfaction with the technical assistance provided by DEP. Table 1 shows that 65% of the towns rated the assistance as either "timely" or "very timely." Table 2 indicates that 60% of

Table 1. Timeliness of technical assistance: Have responses by DEP to your requests for assistance been timely or have you experienced delays in getting help?

	<u>Towns Responding</u>	
	<u>Number</u>	<u>Percent</u>
Very timely	8	17.4
Timely	22	47.8
Neither timely nor delayed	6	13.0
Delayed	5	10.9
Very delayed	5	10.9
Total	<u>46</u>	<u>100.0</u>

Source: LPR&IC survey of local inland wetlands agencies.

Table 2. Quality of technical assistance: How would you rate the quality of technical assistance provided by DEP to your agency?

	<u>Towns Responding</u>	
	<u>Number</u>	<u>Percent</u>
Very high quality	6	14.0
High quality	20	46.5
Average	9	20.9
Low quality	5	11.6
Very low quality	3	7.0
Total	<u>43</u>	<u>100.0</u>

Source: LPR&IC survey of local inland wetlands agencies.

towns considered the assistance either "high" or "very high" in quality.

To further analyze these results, an examination of written comments made by the towns which had requested technical assistance was conducted. Of 30 towns supplying comments, 14 (47%) made statements unfavorable to the Gill Administration, while 12 (40%) made favorable comments relevant to previous administrations. Four towns (13%) offered comments which did not specify the administration to which they pertained. No town which had requested technical assistance made a favorable comment specifically relevant to the Gill Administration. Thus, most of the favorable ratings as explained in the comments appear to apply to assistance which was provided prior to the present administration.

Table 3. Comments by local inland wetlands agencies on technical assistance provided by DEP*

<u>Comment</u> <u>Pertains to:</u>	<u>Nature of comment by each town</u>	
	<u>Favorable</u> (percent of total)	<u>Unfavorable</u> (percent of total)
Gill Administration	-0- (0)	14 (46.7%)
Administrations prior to Gill	12 (40.0%)	-0- (0)
No time frame stated	2 (6.7%)	2 (6.7%)
	14	16

* Table does not include comments from towns (6) which have never requested technical assistance from DEP.

Source: LPR&IC survey of Local Inland Wetlands Agencies.

Indeed, several agencies mentioned how recent staff changes at DEP have adversely affected the program:

"...As long as the Water and Related Resources Unit was staffed by Zell Steever, Sam Suffern, Cynthia Ivey, David Emerson, and Janet Hyndman, assistance was both

timely and of very high quality. This is no longer the case...." (Redding)

"...We have had numerous contacts with the employees of the DEP and have always found them to be courteous and willing to help where possible.... Unfortunately the DEP staff was too small to be of much help...and now we don't even bother to call since that entire group is gone." (Colchester)

"...Our most recent approach to DEP occurred several months ago. Because of what happened, we have not approached DEP since that time and have no present intention of resuming relations.... At the time our commission was organized in October 1974 the situation was totally different. At that time, the help given was 'very timely' and of 'very high quality.' This continued so long as Cynthia Ivey [former Inland Wetlands Program Administrator] remained in the Department. It terminated abruptly upon her departure." (East Haddam)

Other related complaints were voiced. Some towns cited lack of funds and manpower needed to administer the program:

"The only real problem the DEP has is a lack of funding which has reduced its most valuable manpower...." (Suffield)

"...The manpower in DEP has been cut to the bone and a very heavy load is placed on the people left...." (Beacon Falls)

"...Our greatest complaint should be directed to the General Assembly.... If you seriously accepted the urgency of the need to control development within inland wetlands...then how did you consider they could carry out that mandate without staff and funds to do it?" (Stamford)

Other town complaints pertained to technical issues:

"One important service that the DEP Inland Wetlands Section has failed to provide is the notification to municipal agencies of annual changes in the Inland Wetlands and Water Courses statutes...the Department... should provide summary statistics and regulatory techniques used by municipal regulatory agencies." (Greenwich)

"...Base data supplied to the State by the U.S. Soil Conservation Service is incomplete...[the Inland Wetlands Legislation] is poor...in the case of violations, it is virtually unenforceable."
(West Hartford)

Administering the complex Inland Wetlands regulatory program is a difficult task for local agencies. Most agencies do not have full-time professional staff and rely heavily on the volunteer services of town citizens. When many agencies were organizing (1973-75), assistance was needed from DEP to prepare regulations. Agencies continue to need technical assistance to properly administer the program. Results of the LPR&IC survey indicate that the State Department of Environmental Protection is not currently providing adequate technical assistance to local agencies as mandated by the Inland Wetlands and Water Courses Act.

Program Administration: Case Reviews

To evaluate DEP's administration of the Inland Wetlands Program, several case files were reviewed. In this section, findings and recommendations from this review are reported.

Goodrich Realty Group. On August 8, 1975 Goodrich Realty Group filed an application for an Inland Wetlands permit to develop a shopping center in Milford.

According to a legal affidavit, Ms. Cynthia Ivey, then Administrator of the Inland Wetlands Program, stated that she had been designated as the hearing officer for all inland wetlands applications. Shortly before the public hearing on Goodrich (February 26, 1976), she learned of a private meeting between Commissioner Gill and representatives of the developer.* Subsequent to this meeting, Ms. Ivey was informed by Acting Water Resources Director, Edward Daly, that she would not serve as hearing officer for the Goodrich application. Instead, Mr. Daly delegated that responsibility to William P. Sander of the Tidal Wetlands Program. According to Ms. Ivey's affidavit, Sander had never before served as a hearing officer in an inland wetlands case.

* Ex parte communications: Agency representatives who are authorized to render a decision or make findings of fact relative to an application or hearing are prohibited from communicating with any party, either directly or indirectly, relative to that decision or finding except upon notice and opportunity for all persons to participate (C.G.S. 4-181).

Commissioner Gill, in response to written legal interrogatories, has denied knowledge of the Goodrich meeting. However, Mr. Daly indicated to this Committee's staff that he participated in such a meeting at Commissioner Gill's request. He further stated that the meeting between DEP and the developer resulted in a decision to appoint a hearing examiner other than Ms. Ivey.

The LPR&IC finds that Commissioner Gill derogated his statutory responsibility by conducting ex parte communications with the applicant, Goodrich Realty, prior to conducting a public hearing on the matter on February 26, 1976.*

At the public hearing, Mr. Sander refused to allow into evidence a technical report prepared by former DEP field inspector David Emerson. The report, which was unfavorable to the developer, was introduced by Allan Williams, an Environmental Analyst at DEP. Mr. Williams had conducted an independent field inspection and had drawn similar conclusions to those formulated by Mr. Emerson.

Mr. William Shea, attorney for the applicant, objected to Mr. Emerson's report because he understood that the Attorney General had ruled that the Emerson report could not be introduced as evidence. There is no evidence to indicate that the Attorney General issued a formal or written opinion relative to this matter, nor was such a decision part of the record.

Because Mr. Emerson's technical evaluation was not introduced into evidence, there was no opposition to the proposed application. Commissioner Gill, on the basis of Mr. Sander's favorable findings, issued a permit on April 30, 1976.**

On May 5, 1976, a group of eighty-two Milford citizens appealed Commissioner Gill's decision. In response to this action, Commissioner Gill revoked the permit previously granted Goodrich. Gill stated that the hearing examiner had been illegally appointed and therefore his decision was invalid and without legal effect. On July 1, 1976, three days after he

* This problem is not unique to DEP and has led to a suggestion that permit decisions be delegated to an independent board in order to allow the Department to fulfill its public information and technical assistance functions.

** Hearing officers submit a proposed "finding and decision" to the Commissioner for his signature. On the basis of the hearing record, the Commissioner may either grant or deny the permit.

revoked the permit, Gill conducted a second meeting at the request of the developer's attorney.

One week later (July 8, 1976), Commissioner Gill reversed his earlier revocation and granted the original permit. The Milford Citizen's Group then filed a second legal action against the Commissioner alleging that the July 1 meeting served as a "hearing" at which a final decision was rendered, which affected substantial rights of the group. The complaint was further amended to challenge the authority of DEP's reorganized "Water Resources" unit to render a decision which was in violation of the Department's duly promulgated regulations.*

The LPR&IC finds that the Department of Environmental Protection's processing of the Goodrich Realty application was replete with error and the appearance of impropriety.

Achenbach Realty (Milford). On March 5, 1976, an application for an Inland Wetlands permit was filed by William H. Mahland for Achenbach Realty Companies (ARC), a private developer. ARC Construction Company planned to build 87 apartment units on a wetland in Milford.

The application was evaluated by the U.S. Soils Conservation Services and by DEP technical experts. In a report to Acting Director of Water Resources, Edward Daly, Howard Denslow

* The Committee's staff reviewed other legal documents which relate solely to the applicant, Goodrich Realty. On February 3, 1976, the Court of Common Pleas for New Haven County issued a ruling which found that the Meriden Inland Wetlands Commission acted "illegally and unlawfully in accepting" a "gift" of \$75,000 in considering the issuance of a similar inland wetlands permit to Goodrich Realty in the town of Meriden.

In the Milford application, Goodrich entered into an agreement (March 29, 1976) with abutting land owners. In consideration of the payment of \$15,000, the abutters agreed that under no circumstances would they appear in any proceeding to oppose or negate any applications made by Goodrich relative to the Milford shopping development.

Finally, within the agreement, Goodrich refers to itself as a Connecticut corporation. Goodrich is, in fact, not a registered Connecticut corporation. On January 29, 1976 the subject's name was changed to Mid-Conn Industries.

of the Soils Conservation Service noted the ecological value of the wetland as a wildlife habitat and predicted problems with water runoff and hydraulic capacity if the development were built. DEP consultant Michael Lefor concurred with Denslow in a separate report. "Development...of the property," wrote Lefor to Daly, "merits further serious consideration before such activity is allowed to proceed because of its isolated character, the presence of a rare species, and the richness of the flora present."

Another DEP technician challenged the hydraulics data submitted by the applicant. "Additional information addressing the effect of [water] storage loss, errors in the environmental analysis, and the ability of the downstream drainage system to handle the increased peak flows is needed for proper evaluation," said Engineer Intern Robert Leach to Acting Program Administrator Robert Miller.

On July 20, 1976, Miller wrote to the applicant, William Mahland, indicating that a "negative decision was pending." Miller specifically cited the hydraulics problems which would need to be resolved before the project could be approved. In his letter, Miller advised Mahland that he was entitled to a public hearing on the pending application, or that he may wish to submit a new, revised application.

At the time of the ARC application, Robert Miller, a hydrogeologist, was serving as temporary administrator of the Inland Wetlands Program. He had no direct prior experience in wetlands administration. After being transferred to Water Resources, Miller was orally briefed by Edward Daly, but never received a copy of DEP's written procedures for processing applications which, according to Daly, were in effect at the time.

Miller said that after his letter of July 20, 1976, to ARC indicating that the permit was about to be turned down, ARC called him to request a conference.* Miller granted the request

* As noted elsewhere, DEP procedures prohibit ex parte communications with permit applicants except to advise the applicant as to the status of the application.

and met privately shortly thereafter with William Mahland and ARC engineer, George Smilas. Miller recalls that Mahland and Smilas asked him if he would approve the application if they could successfully refute his objections. Miller was concerned at the time that submission of additional information or plans would constitute a revision of the original application, and might require filing a new application for review.

Smilas officially responded to Miller's letter July 29, 1976 disputing his objections to the project and submitting new data. On August 2, 1976, four days after Smilas's letter, a permit was issued with conditions requiring sedimentation control.

Miller stated that he "felt neglected" on the procedural question of whether ARC should be required to file a new application. On two occasions, he talked to Commissioner Gill about the application. Although Gill put no direct pressure on Miller to approve or disapprove the application, neither did Gill actively help Miller to resolve the procedural question. Eventually, Miller believed it "didn't make any difference." Thus, when ARC's response to his objections seemed adequate, he wrote his decision recommending the permit be granted.

Miller's decision made no mention of the biological impact of the proposed project, but rather was restricted to consideration of engineering and hydraulics. When asked why biological factors were not considered in reaching his decision, Miller said that he was given the distinct impression in initial discussions with Edward Daly that a negative decision would not be based on biology. Miller believed that if an application were turned down, it would have to be based on poor engineering. When questioned about his discussions with Miller, Daly said he told Miller to "consider the statutory provisions" which include effects on biology and wildlife.

The LPR&IC finds that in the Achenbach Realty case, the biological impact of the proposed development was not considered by Acting Administrator Robert Miller in formulating his decision, contrary to the mandate and intent of the Inland Wetlands Act (Sec. 22a-36 to 41). Furthermore, there was no public hearing on the application, and ex parte discussions with the permit applicant were held. In meeting with the applicant prior to issuance of the permit, Miller violated DEP written procedures.

Regional Vocational Technical School (Groton). On December 23, 1974, an application for an Inland Wetlands permit was submitted by the general contractor for a regional vocational technical school in Groton. The contractor, the Fusco Amatruda Company of

New Haven, sought a permit to build two bridges over the Fort Hill Brook on the construction site and to undertake site improvements on the west side of the brook to be used as an athletic field. In November, 1974 Fusco Amatruda had been advised by DEP's Deputy Commissioner, Theodore Bampton, that a permit would be needed to continue work at the site.

A report was filed March 5, 1975 by DEP Field Inspector David Emerson indicating that construction of the bridges would not cause serious harm, but construction of the athletic field "should not be permitted" since this would result in "the loss of a valuable natural resource area...." Five days later, Commissioner Gill sent a letter to Fusco Amatruda permitting construction of the bridges but denying a permit for the athletic field.

The contracting agency overseeing work on the project, the State Department of Public Works (DPW), attempted immediately to have the Commissioner's decision reconsidered. Meetings between the DPW, the contractor, and DEP were held on March 19, 1975 in Gill's office and at the job site. Revision of site grading plans had been previously submitted to Gill under a cover letter dated March 14, 1975.

Subsequent to this action by DPW, Commissioner Gill wrote to DPW Commissioner Robert Weirnerman on May 27, 1975 modifying the permit decision to allow construction of the athletic field. The modified permit provided that the contractor was required to institute specific erosion and sedimentation control measures. Thus, ex parte communications, not allowed by the Department's written procedures, resulted in the revision of a permit decision. Moreover, a state agency which was not the permit applicant was allowed to intercede on behalf of the contractor and applicant, the Fusco Amatruda Company.

The permit conditions calling for erosion control measures were not enforced by DEP despite serious erosion problems at the site. DEP's Acting Director of Water Resources, Edward Daly, wrote to Commissioner Weirnerman on July 8, 1975 calling for specific structures to control sedimentation and erosion. According to Daly's memo these structures were to be "vigilantly maintained" to the satisfaction of DEP. On July 24, 1975, Francis Weiszer, Chief of Design and Review at DPW, responded to Daly's memo by saying that the recommended structures would not be used because they were too costly.

After the town of Groton's Inland Wetlands Agency complained to Commissioner Gill about the "continued ravaging" of Fort Hill Brook at the job site, a letter was prepared for

Commissioner Gill's signature, dated August 21, 1975, ordering implementation of erosion control measures. The letter was never sent, however.

When the town of Groton complained again in November 1975, Gill wrote back saying that the erosion control barrier shown on the site plans was outside the bounds of the wetland and "not within the purview of the permit." Gill referred the matter to the Water Compliance Unit saying that the Water Resources Unit did not have the authority to correct the problem.

The failure of DEP to enforce permit conditions is clearly demonstrated by this case. Until November 1975, when the case was transferred from the Water Resources to the Water Compliance Unit, the Department failed to enforce permit conditions requiring proper sedimentation and erosion control. Furthermore, another state agency, the Department of Public Works, intervened on behalf of the permit applicant to get around DEP objections to project plans. Finally, a public hearing was not held on the application and the Groton inland wetlands agency, which objected to the application, was not given a formal hearing.

Stratford Land and Improvement Company (Stratford). On May 13, 1975, the Stratford Land and Improvement Company filed an application for an Inland Wetlands permit. The area covered by the application had long been the focal point of local controversy.

The Department's regulations (22a-34-5.2) detail the specific information that is required for all Inland Wetlands applications. These regulations require that the applicant set forth the proposed activity to be conducted within the regulated wetlands. In addition, the applicant must describe the purpose of the proposed activity (i.e., new business, industrial park, etc.). Stratford's application stated that the proposed activity would involve the deposition of material to raise the fill to the grade of adjacent property. The application was accepted with no other information concerning the proposed use, although development was allegedly being considered for the site. Because DEP regulations and application requirements can be legally circumvented under existing law, the LPR&IC recommends that the Inland Wetlands and Water Courses Act be amended to require the issuance of a "restricted permit" in applications where no development or construction is proposed. A "development or construction permit" would be granted only upon submission of specific, detailed plans.

As a result of citizen opposition, Commissioner Gill scheduled a public hearing on the application. Such hearings

are not mandated, but are held at the discretion of the Commissioner. Three days of testimony was received relative to the Stratford application.

DEP's field inspection report stated that "no specific, detailed, development plan has been included in the application. It has therefore not been possible to assess the impact of site development on adjoining areas." The report goes on to state that any development would have an adverse effect upon the area's wild and biological life. DEP's professional consulting biologist made similar findings which opposed the granting of a permit.

Questions about the ultimate purpose of filling the land (i.e., potential development) were not allowed into evidence at the public hearing. When DEP field inspector David Emerson attempted to read his report into the record, counsel for Stratford objected arguing that the "proposed purpose" was to fill the land, not to develop it. Hearing officer Edward Daly, sustained the objection and ordered Emerson to refrain from any reference to the development of the area. Emerson, at this point, was about to indicate that the land was zoned for industrial use and that a dog track was being considered for the site. Attorney Robert Frankel, speaking as a private citizen, cited a statute (C.G.S. 22a-41) which requires the Commissioner to consider into evidence the "environmental impact of the proposed action" and which further requires consideration of "all relevant facts and circumstances." Despite this seemingly valid objection, Daly's ruling prevailed and no technical evidence was introduced as to the effect a proposed development would have on the regulated area.

The transcript of this hearing (October 20, 1975) reveals a very emotional and sometimes inconsiderate attitude on the part of Hearing Officer Daly toward his staff and the counsel of record. Thirty-six pages of transcript record Mr. Emerson's effort to read his five-page field report into evidence. All references to the proposed development activity were excluded from the record. As a result, Mr. Daly formulated a favorable report and Commissioner Gill issued a permit to Stratford on June 29, 1976. The permit was granted on the sole condition that the applicant notify the Commissioner upon completion of the work.

The LPR&IC finds that Hearing Officer Daly derogated his statutory duty (C.G.S. 22a-41) by failing to evaluate and consider the environmental impact of the proposed activity as well as all relevant facts which relate to the proposed purpose or development.

Based upon the findings for the Groton and Stratford cases reviewed during this investigation, the LPR&IC recommends: (1) that section 22a-41(a) of the Connecticut General Statutes be amended to specifically require the Commissioner of Environmental Protection to consider the environmental impact of any proposed action, including but not limited to the development, construction, or erection of structures on or significantly affecting a regulated area, and (2) that section 22a-39 of the Connecticut General Statutes be amended to require a public hearing on all inland wetlands applications.

Schesinger (Stamford). Considerable development is taking place in Connecticut which is subject to DEP regulation but for which no permit application has been submitted. Such violations, when identified, normally result in an application being filed by the developer.

On July 21, 1975, DEP's Inland Wetlands staff made an inspection of a reported violation occurring behind the Bracewood Apartment Buildings in Stamford. This inspection resulted in the determination that an inland wetlands violation had occurred involving the deposition of approximately one-half acre of fill and alteration of wetlands on the property of Mr. Richard Schesinger. Wetlands Administrator, Ms. Cynthia Ivey, wrote Schesinger a week later informing him that an application and permit were required.

No application was received and a "Notice of Violation" was issued by Commissioner Gill on September 10, 1975. This notice was prepared in response to a second inspection on August 27, 1975, which revealed a continuing violation. Ms. Ivey later drafted an "Order" to Mr. Schesinger requiring him to cease in the deposition of material into a regulated area. This "Order" was prepared in accordance with the department's duly promulgated regulations (22a-39-9.2 and 22a-39-9.3). Mr. Daly then informed Ms. Ivey that according to the Attorney General's office, the Commissioner is not explicitly authorized by statute to issue "Orders" of enforcement. However, no formal or written opinion was ever issued by the Attorney General's staff relative to this matter.

On September 25, 1975, Mr. Daly wrote to Mr. Schesinger's attorney and reminded him that an unlicensed activity continued to occur and that a permit application would have to be filed within 30 days.

No application was filed. However, Mr. Schesinger's attorney asked for a conference concerning the violation.

The Committee has no information relative to this ex parte communication. However, the violation continued to exist as late as October 29, 1975, the date of DEP's last inspection. No further action has been taken by DEP relative to licensing this regulated activity.

The Legislative Program Review and Investigations Committee therefore recommends that section 22a-39(h) of the Connecticut General Statutes be amended to delineate the Commissioner's specific power to issue enforcement "Orders" relative to the administration of the Inland Wetlands program.

END NOTE

Need for Further Review of DEP

The third topic originally selected for study--preparation of the transportation control plan and reversal on state highway projects--was not covered in this investigation. A cursory examination of the topic indicated that a program review focusing on the "adequacy," "diligence," and "effectiveness" of the management of the Air Quality Unit might be more appropriate and useful than an investigation focusing on compliance with law (see Exhibit 1, p. 4).

During the course of this investigation, other issues developed which also merit serious consideration for a program review. Many employees interviewed by the LPR&IC talked extensively about problems in management and administration of the Division of Environmental Quality. According to employees, these problems have an adverse effect on employee morale and productivity as well as DEP enforcement efforts. Low morale evident throughout the Division of Environmental Quality appears to be partly the result of personnel and administrative practices which were instituted at DEP under the Gill Administration.

In the Division of Conservation and Preservation, which was not the focus of this investigation, similar problems were brought to the Committee's attention. For example, several conservation officers in Region I have filed a series of grievances against their law enforcement supervisor alleging administrative incompetence and abuse of authority.

There is a clear need for review of certain DEP operations not covered in this investigation. Therefore, the LPR&IC staff suggests that a program review of management and administrative practices in DEP's two major divisions be conducted to find ways to improve the agency's efficiency and effectiveness. This review should focus on problems brought to the Committee's attention

while conducting this investigation, should those problems continue to exist under the Department's next Commissioner.

Criminal Liability

During this investigation, the LPR&IC found no evidence supporting allegations of criminal liability on the part of Commissioner Joseph N. Gill. Furthermore, there is no evidence that Commissioner Gill knowingly or wilfully derogated his statutory duties with regard to the Department's reorganization and administration of its Inland Wetlands Program.

Final Disposition

Pursuant to Public Act 75-388, the Legislative Program Review and Investigations Committee forwards this Report to the 1977 General Assembly for appropriate legislative action. In addition, the Report will be forwarded to Governor Ella T. Grasso and the new DEP Commissioner, Stanley J. Pac, for appropriate administrative action.

Agency Response

The Legislative Program Review and Investigations Committee received a written response to this investigation from DEP Commissioner, Joseph N. Gill, on December 29, 1976. A copy of this response is available for public inspection in the Committee office, Room 404, State Capitol.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

DEP Reorganization

The LPR&IC finds that the 1975 restructuring of the Department of Environmental Protection was a major reorganization. Therefore, because the Commissioner did not promulgate regulations which were in "substantial compliance" with Sec. 4-168(c) of the Uniform Administrative Procedure Act, the LPR&IC finds that the 1975 DEP reorganization is invalid (p. 11).

The LPR&IC also recommends that DEP retain independent, in-house counsel to aid in carrying out the regulatory function of the department (p. 13).

Inland Wetlands Program

Results of a LPR&IC survey indicate that the State Department of Environmental Protection is not currently providing adequate technical assistance to local agencies as mandated by the Inland Wetlands and Water Courses Act (p. 18).

To evaluate administration of the Inland Wetlands Program, several cases were reviewed.

In the Goodrich Realty Case (Milford), the LPR&IC finds that Commissioner Gill derogated his responsibility by conducting ex parte communications with the applicant, Goodrich Realty, prior to conducting a public hearing on the matter on February 26, 1976 (p. 19).

The LPR&IC finds that the Department of Environmental Protection's processing of the Goodrich Realty application was replete with error and the appearance of impropriety (p. 20).

The LPR&IC finds that in the Achenbach Realty case (Milford) the biological impact of the proposed development was not considered by Acting Administrator Robert Miller in formulating his decision, contrary to the mandate and intent of the Inland Wetlands Act (C.G.S. 22a-36, 22a-41) (p. 22).

The LPR&IC finds that ex parte communications which are not allowed by the Department's written procedures resulted in the revision of a permit decision in the Groton Regional Vocational Technical School case (p. 23).

In addition, the LPR&IC finds that in the Vocational Technical School case, the Department of Environmental Protection

failed to enforce permit conditions requiring proper sedimentation and erosion control. Furthermore, another state agency, the Department of Public Works, intervened on behalf of the permit applicant to get around DEP objections to project plans. Finally, a public hearing was not held on the application and the Groton inland wetlands agency, which objected to the application, was not given a formal hearing (p. 24).

Because DEP regulations and application requirements can be legally circumvented under existing law, the LPR&IC recommends that the Inland Wetlands and Water Courses Act be amended to require the issuance of a "restricted permit" in applications where no development or construction is proposed. A "development or construction permit" would be granted only upon submission of specific, detailed plans (p. 24).

In the Stratford Land case (Stratford) the LPR&IC finds that Hearing Officer Daly derogated his statutory duty (C.G.S. 22a-41) by failing to evaluate and consider the environmental impact of the proposed activity as well as all relevant facts which relate to the proposed purpose or development (p. 25).

Based upon the findings for the Groton and Stratford cases reviewed during this investigation, the LPR&IC recommends: (1) that section 22a-41(a) of the Connecticut General Statutes be amended to specifically require the Commissioner of Environmental Protection to consider the environmental impact of any proposed action, including, but not limited to, the development, construction, or erection of structures on or significantly affecting a regulated area, and (2) that section 22a-39 of the Connecticut General Statutes be amended to require a public hearing on all inland wetlands applications (p. 26).

The LPR&IC recommends that section 22a-39(h) of the Connecticut General Statutes be amended to delineate the Commissioner's specific power to issue enforcement "Orders" relative to the administration of the Inland Wetlands program (p. 27).

Criminal Liability

The LPR&IC found no evidence of criminal liability on the part of Commissioner Joseph N. Gill. Furthermore, there is no evidence that Commissioner Gill knowingly or wilfully derogated his statutory duties with regard to the Department's reorganization and administration of its Inland Wetlands Program (p. 28).

Exhibits

State of Connecticut

GENERAL ASSEMBLY

Exhibit 1



ENVIRONMENT COMMITTEE

State Capitol

HARTFORD, CONNECTICUT 06115

July 15, 1976

The Legislative Management Committee
The State Capitol
Hartford, Connecticut 06115

Gentlemen:

At a meeting of the Joint Legislative Committee on the Environment held on June 25, 1976, it was unanimously voted to request the Legislative Management Committee to direct the Program Review and Investigations Committee to conduct an investigation of the Department of Environmental Protection.

This request to you is the culmination of an ongoing legislative oversight review conducted by the Environment Committee as a result of a resolution unanimously adopted by that committee on January 27, 1976. The objective of this resolution was to determine whether the existing statutes accomplished legislatively-stated environmental policy and whether the Department of Environmental Protection is adequately carrying out the General Assembly's mandate.

To date, the Environment Committee's review has consisted of extensive fact-gathering and three days of formal hearings. During these hearings, DEP Commissioner Joseph Gill, other DEP officials, and the public testified before the committee.

The Environment Committee's findings to date reveal several areas of serious public concern over the administration of the Department of Environmental Protection (see attached outline).

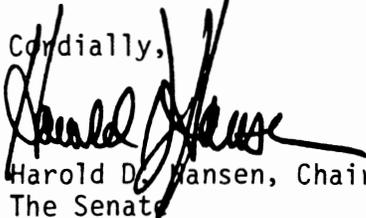
Because of the urgency of this situation and a lack of staff in the Environment Committee coupled with total reliance on voluntary legal counsel not available to the Environment Committee until autumn, it is felt that the Program Review and Investigations Committee with its full-time, non-partisan staff will be better able to follow through on an objective investigation of the administration of DEP.

(continued)

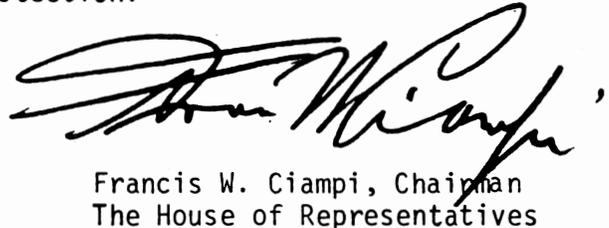
(letter dated July 15, 1976, to The Legislative Management Committee from the Joint Legislative Committee on the Environment)

A well-managed Department of Environmental Protection, vigorously enforcing State environmental laws, is vital to the health and safety as well as the social and economic wellbeing of all the people of Connecticut. We believe that resolution of the areas of public concern outlined on the attached pages is essential to assure public confidence in the Department of Environmental Protection.

Cordially,



Harold D. Hansen, Chairman
The Senate



Francis W. Ciampi, Chairman
The House of Representatives

/h
enclosure

DEP REVIEW
AREAS OF PUBLIC CONCERN

1. DEP REORGANIZATION

Why was the reorganization of DEP in the spring of 1975 not carried out in accordance with the Administrative Procedures Act (requirements of public notice and hearing [4-168] and approval by the Legislative ~~Review~~ ^{Regulations} Committee [4-170])?

Was this reorganization based on sound principles of management and efficiency and done to further the goal of meeting DEP's obligations under the law to protect the environment?

Areas of Concern

- a. Restructuring of the Planning and Research Unit.
- b. Adequacy of legal staff assigned to DEP.
- c. Reorganization of Water-related Resources Unit.
- d. Reorganization of Land Acquisition Unit.
- e. Significance of "Econuts" memorandum.

2. CREDIBILITY OF THE DEPARTMENT

Are the functions of DEP being carried out with a lack of sensitivity and good judgment regarding the need for public trust?

Areas of Concern

- a. Deputy Commissioner Melvin Schneidmeyer's accepting the position of chairman of the Coastal Area Management Advisory Board when the Coastal Area Management Unit is Schneidmeyer's responsibility at DEP.
- b. Selection of examiners for post of Assistant Director for Enforcement -- Air Compliance Unit.
- c. Initiative for activating Litter Control Advisory Board and composition of membership.
- d. Rigidity and lack of concern for public's viewpoint in Water Compliance and Hazardous Substances Unit.
- e. Hostility toward mandate of the Connecticut Environmental Policy Act.
- f. Perfunctory public hearings.

3. INLAND WETLANDS

Has DEP failed to fulfill its mandate to administer the Inland Wetlands Act [22a-36 through 22a-44]?

Areas of Concern

- a. The virtual elimination of the inland wetlands staff.
- b. Justification for layoff of a field inspector in January 1976 on grounds that

(continued)

position was "non-essential" despite contrary testimony of superior that the layoff "will irreparably cripple the inland wetlands program."

c. Ability of DEP to provide technical assistance to towns (Fairfield, Orange, Groton).

d. Dilatory prosecution of reported violations.

4. AIR QUALITY AND TRANSPORTATION

Has DEP fulfilled its mandate to reduce Connecticut's transportation-related air pollution as required by the Federal Clean Air Act of 1970 in order to protect the public health?

Has DEP carried out the policy of the State to control air pollution in order to enhance the health, safety and welfare of the people of the State as mandated in 22a-1

Areas of Concern

a. Adequacy of proposed Transportation Control Plan and DEP's diligence in preparation of this plan.

b. Justification for recent reversals of DEP's position on highway construction as it affects air quality.

c. Effectiveness of DEP's participation in transportation planning process.

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Room 404, State Capitol, Hartford, Conn. 06115
(203) 566-4843

October 13, 1976



SENATOR
GEORGE W. HANNON, JR.
CO-CHAIRMAN

REPRESENTATIVE
ERNEST C. BURNHAM, JR.
CO-CHAIRMAN

STATE MEMBERS

Lawrence J. DeNardis
Dr. George L. Gunther
George W. Hannon, Jr.
J. Martin Hennessey
Lewis B. Rome
Richard F. Schneller

HOUSE MEMBERS

Ernest C. Burnham, Jr.
Robert J. Carragher
Astrid T. Hanzalek
Joan R. Kemler
John G. Matthews
Timothy J. Moynihan

Linda A. Adams
Director

Dear (Former) DEP Employee:

The Legislative Program Review and Investigations Committee has begun an investigation of the Department of Environmental Protection. Initially, this investigation will be limited to DEP's compliance with state and federal statutes, as shown in the attached outline.

If you have any information within the scope and perspective of this investigation which you feel would be of interest to us, please contact our office as soon as possible. It would be most helpful and convenient if communications were made in writing. However, you may also call to talk to the staff assigned to this investigation. If appropriate, personal interviews will be arranged by the Committee staff. All information and communications will be treated confidentially as guaranteed by this Committee's Code of Fair Procedures.

Because of the importance and complex nature of this investigation, we need your cooperation and appreciate any relevant information you can provide.

Sincerely,

LEGISLATIVE PROGRAM REVIEW & INVESTIGATIONS
COMMITTEE

Linda A. Adams
Director

LAA:cb
enclosure

Outline of DEP Investigation

Legislative Program Review and Investigations Committee

- I. Compliance with the Uniform Administrative Procedures Act (Sec. 4-166-4-189)
 - A. Restructuring of organizational units
 - 1. Planning and Research Unit
 - 2. Water and Related Resources Unit
 - 3. Land Acquisition Unit
 - B. Legal staff
 - C. Professional staff
 - 1. "Econuts" memo
 - 2. Elimination/selection of staff
- II. Compliance with Inland Wetlands Act (Sec. 22a-36-22a-45)
 - A. Technical assistance to towns
 - B. Prosecution of violations
- III. Compliance with federal Clean Air Act and state mandates (Sec. 22a-1)
 - A. Preparation of transportation control plan
 - B. Reversal on state highway construction projects



LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Room 404, State Capitol, Hartford, Conn. 06115
(203) 566-4843

SENATOR
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CO-CHAIRMAN

REPRESENTATIVE
NEST C. BURNHAM, JR.
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MEMBERS

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MEMBERS

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Robert J. Carragher
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Joan R. Kemler
John G. Matthews
Timothy J. Moynihan

Linda A. Adams
Director

TO: Local Inland Wetland Agencies

FROM: Linda A. Adams, Director
Legislative Program Review &
Investigations Committee

Our Committee recently initiated an investigation of the State Department of Environmental Protection as authorized and directed by the Joint Committee on Legislative Management. One specific issue to be reviewed is the adequacy of technical assistance provided by DEP (and mandated by Section 22a-39(c) of the Connecticut General Statutes) to Local Inland Wetland Agencies.

Enclosed is a survey asking you to evaluate the assistance provided to your agency by DEP. Please complete the survey and return it to our office as soon as conveniently possible.

We need your cooperation to properly review this important matter and appreciate your taking the time to assist us by filling out this survey.

LAA:cb
enclosure

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Survey of Local Inland Wetlands Agencies

Agency and Town: _____

Name and title of official completing this survey:

Our Agency has requested technical assistance from State Department of Environmental Protection (DEP)

_____ Yes

_____ No (If "no," please check and return the survey.)

Please evaluate the technical assistance provided by DEP to your Agency by circling the appropriate number. (Additional comments may be made on the reverse side of this survey.)

1. Have responses by DEP to your requests for assistance been timely, or have you experienced delays in getting help?

1	2	3	4	5
very timely	timely	neither timely nor delayed	delayed	very delayed

2. How would you rate the quality of assistance provided by DEP to your Agency?

1	2	3	4	5
very high quality	high quality	average	low quality	very low quality

3. If your Agency has experienced any serious problems with the DEP, please describe the case on the reverse side of this survey and forward to us any available documentation.

Please return this survey to: LEGISLATIVE PROGRAM REVIEW AND
INVESTIGATIONS COMMITTEE
Room 404, State Capitol
Hartford, Connecticut 06115

LEGISLATIVE PROGRAM REVIEW & INVESTIGATIONS COMMITTEE

PUBLICATIONS LIST

Grants-in-Aid to Municipalities, Vol. II, in press.

Bonding in Connecticut, in press.

An Investigation of the Department of Environmental Protection, December 21, 1976.

Containing Medicaid Costs in Connecticut, September, 1976.

Preliminary Review of Selected Medicaid Issues In Connecticut, March 24, 1976.

Report on Connecticut State Unemployment Compensation Program, September, 1975.

Preliminary Report on the Financing of Connecticut's Unemployment Compensation Program, April 7, 1975.

Report on the University of Connecticut Health Center, January, 1975.

Report on State Grants-in-Aid to Municipalities, Vol. I, December, 1974.

Community Colleges in the State of Connecticut, July, 1974.

Secondary Vocational Education in Connecticut, March, 1974.

Land Acquisition by the State of Connecticut, September, 1973.

Special Education in Connecticut, April, 1972.

Copies of reports published by the Legislative Program Review and Investigations Committee may be obtained by contacting Ms. Linda Adams, Director, Room 404, State Capitol, Hartford, Connecticut 06115.

1/15/77

