

THE VIRGINIA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION'S
EXEMPTION FROM THE REQUIREMENTS FOR FILING ENVIRONMENTAL
IMPACT STATEMENTS UNDER THE STATE'S
ENVIRONMENTAL QUALITY ACT

by

Daniel D. McGeehan
Research Analyst

and

Mary Bell H. Hevener
Graduate Legal Assistant

(The opinions, findings, and conclusions expressed in this
report are those of the authors and not necessarily those
of the sponsoring agencies.)

Virginia Highway & Transportation Research Council
(A Cooperative Organization Sponsored Jointly by the Virginia
Department of Highways & Transportation and
the University of Virginia)

Charlottesville, Virginia

January 1978

VHTRC 78-R28

1470

FINDINGS AND CONCLUSIONS

Findings

A. Experience with Environmental Protection Acts

1. Federal Level

Since the National Environmental Protection Act was passed in 1969, administration of the environmental impact statement (EIS) process at the federal level has become a multimillion dollar activity. The U. S. Department of Transportation has estimated that in fiscal year 1975 alone it spent \$36,550,000 to process 229 draft statements.

2. State Level

Only seventeen states other than Virginia have statutes or executive orders outlining a comprehensive environmental policy and requiring that EISs be prepared for any action having a significant impact on the environment. An examination of these state laws and executive orders, along with the responses to a questionnaire mailed to environmental agencies in the various states, has revealed that these laws have not in all cases been appropriately implemented, adequately funded, or efficiently enforced. There has been little litigation based on state environmental statutes and involving road and highway construction because of the relative newness of these laws. Most litigation has involved procedural issues. Of the highway cases involving federal or state environmental protection acts that were reviewed, approximately half were won by the highway agencies. In the cases involving state acts alone, average delays of from 1-1/2 to 3 years were caused the highway agencies.

B. Virginia's Environmental Quality Act

1. While all state agencies are responsible for complying with the Virginia Environmental Quality Act, the statutory provision requiring the filing of EISs with the Governor's Council on the Environment contains a clause exempting road and highway projects
2. Despite this exemption, Department projects undergo review by the Department itself, by other state agencies, and the public. In addition, the legal staff assigned to the Department by the Attorney-General of the Commonwealth reviews those projects with significant legal implications

and is constantly available for consultation. The fact that the Department has not been sued under the environmental quality act on any state funded projects attests to the thoroughness of the existing review process.

3. The Department has developed an extensive public involvement program which encourages citizen participation on all projects. This program includes public hearings, informal public meetings, surveys, and an open door policy for officials in the Central Office and at the district and residency levels. The Department's public involvement policies are the subject of continual research and evaluation.
4. Permits are needed for both state and federal projects before construction can begin. Consequently, the Department is in contact with many state and federal agencies on all projects.
5. The Environmental Quality Division is constantly attempting to enhance the expertise of its staff by requesting research in many environmental areas, including noise, air and water quality, public involvement, relocation, and historic preservation. The energetic implementation of the recommendations made by the Virginia Highway and Transportation Research Council has resulted in recognition of the Department as being a leader in a number of environmental areas by the federal government and other states. Also, the Department, in conjunction with the Virginia Historic Landmarks Commission and the Research Council, has recently gained recognition at the national level by establishing criteria for identifying and preserving historic bridges.
6. At an annual rate of 9%, the cost of delaying the Department's activities resulting from the preparation of 200 state project EISs and the introduction into the review process of approximately 400 EISs on state and federally funded projects alone would cost the Commonwealth nearly \$8 million annually in construction costs. A more conservative inflation rate of 6% would result in an annual cost of approximately \$5.3 million.
7. The utilization of additional man-hours could reduce costly delay, but would not eliminate it. The estimated 83,000 man-hours required to process EISs for the approximately 400 projects at a rate of \$10 per hour would cost the Commonwealth \$830,000. If, as was the case under the National Act, the requirement that the Department begin

to file EISs were imposed retroactively, still more substantial costs might be incurred. Statements would have to be prepared and additional hearings held to update projects already far beyond the planning stages. Outside consultants might have to be hired to reduce the backlog of projects to be reviewed.

8. The provision stated in Virginia Code §33.1-12 et seq. gives authority to the Highway Commission and Commissioner to administer the activities of the Virginia Department of Highways and Transportation. A special fund, the Highway Maintenance and Construction fund, has been established in an attempt to stabilize the highly variable factors in road and highway planning and construction.
9. In a survey of eighteen state agencies conducted by the Governor's Council on the Environment to determine their attitude toward the Department's exemption from EIS filing requirements, twelve expressed satisfaction with the way the Department is handling environmental matters and foresaw no advantage in removing the exemption. None of the responses forwarded to the Department indicated any dissatisfaction with the its policies regarding the environment.

Conclusions

- A. EIS procedures run the risk of becoming unwieldy, as the federal government and the eighteen states which have passed their own environmental policy acts have learned. Many observers feel that the achievements of the National Act have not been repeated at the state level. Too often the state requirements, in general, have served not as environmental planning tools, but as procedural roadblocks.
- B. The road and highway projects conducted by the Virginia Department of Highways and Transportation undergo scrutiny which in all cases meets and many times exceeds the objectives and intent of the Virginia Environmental Quality Act.
- C. In Virginia, the result of putting over 400 road and highway projects into the Commonwealth's EIS system will be an immediate need for more regulations, more man-hours of reviewing time, and more time delay costs for construction programs. EISs for road and highway projects would soon dominate the review process, and the quality of review now afforded projects of other agencies would be diminished. This pejorative effect should be considered when amendments to Virginia's Environmental Quality Act are proposed.

- D. If the Department's exemption from filing EISs were removed, the highway project budget would be increased by millions of dollars per year as a result of inflation during months of delay and of the cost of additional man-hours for processing EISs.

- E. With the termination of the exemption, the authority given to the Highway and Transportation Commission and Commissioner by the Virginia Code for administering the activities of the Department, and the allocation of the special fund, would be implicitly transferred to the Council on the Environment and other state agencies. This action would separate the authority for administering a program from the responsibility and accountability for that program.

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INTRODUCTION

The efficient use of natural resources and the quality of the environment have become major concerns of citizens and their legislative representatives over the last decade. In 1973 the state of Virginia followed the lead of the federal government by legislating an Environmental Protection Act. Like the National Environmental Protection Act of 1969 (NEPA), Virginia's act contains a provision requiring the submission of an environmental impact statement (EIS), which essentially is a tool for administering the act, for specified activities. Unlike the corresponding provision in the national act, the EIS provision in Virginia's act gives an exemption to road and highway projects, an exemption that has come into question each year prior to the convening of the General Assembly. The latest questioning of the exemption has been initiated by the Governor's Council on the Environment.

The purpose of this report is to present the results of an examination of the exemption requested by the Environmental Quality Division of the Virginia Department of Highways and Transportation. The research briefly examined the NEPA, studied the Virginia Department of Highways and Transportation's policy and practices relating to the goals of the Commonwealth's Environmental Protection Act, surveyed the environmental laws and regulations of other states and the problems encountered in administering them, and developed estimates of additional costs that possibly could result from a termination of the Department's exemption from the requirement to submit EISs on road and highway projects. Also considered was the effect of terminating the exemption upon the authority given the Highway and Transportation Commission and Commissioner in the state code.

THE NATIONAL ENVIRONMENTAL PROTECTION ACT

The need for improved efficiency in the use of the nation's natural resources has become obvious in the last decade. Toward that end, the National Environmental Protection Act of 1969 was signed into law on New Year's Day, 1970. The purpose of this Act is set forth in Title I, Declaration of National Environmental Policy, which states:

- Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.
- (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may —
- (1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - (2) Assure for all Americans safe, healthful, productive and esthetically and culturally pleasuring surroundings;
 - (3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

- (4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
- (5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

Section 102(2)(C) of the NEPA sets forth the requirement that before taking any major action, all federal agencies must prepare a detailed document which describes the potential environmental impacts of that action and which proposes alternative methods of accomplishing the same objectives. This document is known as an Environmental Impact Statement (EIS). The Council on Environmental Quality (CEQ) is established and described in Title II, Section 203 of the NEPA.

Since passage of the NEPA, the CEQ has on three occasions revised its guidelines detailing the content, preparation, and review of EISs. With each revision of the guidelines, the CEQ has stated more explicitly what information is considered pertinent, how it should be presented, how the review process functions, and what weight should be given to maintaining the quality of air, water, land use projects, recreational land, and national historic landmarks.

The latest of these revisions, dated August 11, 1977, and entitled "Interim Guidance to Federal Agencies on Referrals to the Council of Proposed Federal Actions Found to be Environmentally Unsatisfactory," in effect makes the CEQ an interagency referee. This revision was intended to resolve disputes among the growing number of federal agencies which have broadly interpreted their roles under the NEPA. Thus the four-page federal act has been transformed into a complex and costly activity.

The limits of the costs to be incurred by the CEQ in administering the NEPA are established in Section 207 of the Act, which states:

There are authorized to be appropriated to carry out the provision of this Act not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1 million for each fiscal year thereafter.

According to the information in the annual reports published by the CEQ, the costs incurred by other agencies individually rise far above that \$1 million figure each year. In fiscal year 1974 the cost of EIS preparation, review, and comment incurred by the U. S. Department of Transportation (DOT) alone was \$31,996,000. By fiscal year 1975, this figure had risen to \$36,550,000.(1)

These multimillion dollar figures are surprising in view of the decline in the number of draft EISs filed nationally each year. In fiscal year 1971, 1,293 statements were filed by DOT; in 1972, 674 were filed; in 1973, 432; in 1974, only 360; and by fiscal year 1975, the number had dropped to 229.(2) Consequently, the average cost to prepare, review, and comment on a single EIS rose from \$88,878 in FY'74 to \$159,607 in FY'75. These estimates take into consideration only those costs incurred by in-house and contracted staff. The costs of project delays and court proceedings obviously would push the figures still higher.

These statistics imply that the costs of administering the much needed and well-intended NEPA were not well understood by the framers of the legislation. As the following analysis of the states' experiences with state environmental policy acts (SEPAs) shows, the little NEPAs, like the federal act, have in most instances proved more cumbersome and costly than was originally planned.

STATE ENVIRONMENTAL POLICY AND LAWS

States with Environmental Acts, Orders, or Agreements

Soon after the passage of the NEPA, many states began to consider enacting their own versions of the federal act (collectively referred to as SEPAs in this report) complete with requirements for the EIS. Not all states passed the bills which were proposed, however, nor can all the bills enacted be classified as comprehensive environmental policy acts. A preliminary literature survey made for this report uncovered contradictions even as to the number of SEPAs that have been passed. One study in 1973 put the count at fourteen.(3) A New York Times article in 1975 states that twenty-one states had adopted "the principles of environmental impact assessment", and that fifteen more states were considering the adoption of such principles.(4) Finally, the Virginia Council on Environmental Quality recently issued a

staff report which claims that "presently more than half of the states, twenty-six to be exact, require some sort of environmental review....Nineteen states have adopted general state environmental impact requirements."(5)

In an effort to clear up this apparent confusion, the authors of the present report noted the names of thirty-three states cited in different studies as having any sort of EIS requirements, and contacted the directors of the EIS programs in each of those states requesting copies of relevant statutes and regulations, as well as some additional information. Twenty-two states responded. In the cases of the states which did not reply, as well as the states which were not contacted, the state codes were checked both for SEPA's and for possible EIS requirements. Table 1 summarizes part of the results of this survey.

As Table 1 shows, only thirteen states other than Virginia have enacted comprehensive environmental policy acts. There is considerable variation in the content of these acts. All affirm the goal of a quality environment. Some establish an environmental impact statement review requirement and set up an Environmental Quality Council. Others mandate reorganization; and one allows citizens to bring pollution abatement actions in court. Column 2 of Table 1 shows four states that declare and enforce environmental policy by executive orders or interagency agreements which are generally the same as environmental policy acts, but lack the legal status of law.

Table 1
Result of Survey of State EIS and EIR Requirements

State	General EIS Requirement		EIR Requirement, Selected Areas or Activities	Citations
	Enforced By Legislative Authority	Based on Executive Order		
Arizona			Game & Fish Comm.	Rev. Stat. §17-267
California	X			Pub. Res. Code §21000-21176 (1972)
Connecticut	X*			Gen. Stat. Ann. Ch. 439 §§22a-1 and 22a-15 (1973)
Delaware			Coastal Zone & Wetlands	Code §7001 et seq.
Florida			Coastal Zone & Wetlands	Code §380.012 et seq.
Hawaii	X			Rev. Stat. Ch. 343 (1975)
Indiana	X			Code 13-1-10 et seq. (1971)
Maine			Coastal Zone & Wetlands	Rev. Stat. §474
Maryland	X*			Nat. Res. Code §1-301 et seq. (1974)
Massachusetts	X			Laws, Ch. 30 §61-62 (1973)
Michigan		X		
Minnesota	X			Stat. Ann. Ch. 116D (1974)
Montana	X*			Code §69-6501 et seq. (1973)
Nebraska			X	EIS under Roads Action Plan
New Jersey		X		
New York	X			Env. Cons. Law §8-0103 et seq. (1976)
North Carolina	X			Gen. Stat. Ch. 113A (1973)
South Dakota	X*			Comp. Laws Ch. 245 (1974)
Texas		X		
Utah		X		
Virginia	X			Code Ann. §10-17.107 et seq. (1973)
Washington	X			Code Ch. 43.21C (1977)
Wisconsin	X			Stat. Ch. 274, §1.11 et seq. (1972)

*Response indicated that no authoritative guidelines had been promulgated.

Finally, only five states have minimal environmental review requirements for selected activities and areas. Arizona, for example, has special EIS requirements for the Game and Fish Commission; Delaware, Florida, and Maine require statements for their coastal zones and wetlands; and Nebraska requires EISs as part of its "Roads Action Plan". It should be noted as well that six states (Arkansas, Colorado, Florida, Georgia*, Illinois, and Nevada) have citizens' standing statutes, which do no more than confer standing for private citizens to litigate environmental issues.

The eighteen comprehensive state acts, orders, and agreements tend to be patterned after the federal statute. Most are generally prefaced by policy declarations which are of little practical usefulness to the agencies, but which are heavily relied upon by the courts in determining the scope and applicability of environmental assessment procedures. The teeth of the SEPAs are their requirements that government agencies and, frequently, state-regulated private parties⁽⁷⁾ prepare EISs before undertaking any action having a major effect on the environment. As a final check on the decision-making process, the SEPAs all ensure that interested parties will have access to the EISs. Thus the public and other governmental agencies have a chance to challenge the informational bases of the statements, as well as any obvious biases of the preparing agencies.

Problems Encountered with SEPAs

Research into the legislative history, implementation, and judicial construction of all the SEPAs has shown that the mere fact that these laws exist does not mean that they have met with universal approval, that they are effectively drafted, or that they are efficiently enforced.

Some SEPAs met with strigent initial opposition; for example, in the debates on the statehouse floors. The controversy over Wisconsin's act was representative.

The bill encountered substantial resistance within the state senate because of its similarity to NEPA. One Senator, referring to the bill's impact statement requirement, declared that the bill was "an administrative nightmare". He stated that he had been "advised by the people in Washington that [NEPA was] driving them out of their gourds".⁽⁸⁾

*The Georgia spokesman, in particular, emphasized that the state has no EIS regulations, and that he was "glad that Georgia has not seen fit to expand our bureaucratic environmental review process".

Another state, New Mexico, was forced by political pressure to withdraw the SEPA it had passed in 1971.⁽⁹⁾

Even since these bills have been on the books to stay, the agencies responsible for enforcing the statutes have in some cases been hampered by flaws in the SEPA's themselves. In at least one state, Wisconsin, implementation was at a standstill from the start due to the lack of any state agency having been designated as the EIS clearinghouse. As is explained by the student editors of a recent Wisconsin Law Review article, the drafters of that state's statute purposely deleted any provision relating to the establishment of a state coordinating agency, like the federal CEQ. Confusion ensued until the governor appointed an informal committee to assume responsibilities for coordinating agency compliance with the SEPA.⁽¹⁰⁾

A more common and still basic problem with the SEPA's has been the lack of funds and staff for implementing these statutes. EISs are technical, exacting, and expensive documents. If the agencies drafting them are not properly funded, they will not be properly prepared. States which require only assessment of environmental factors can expect to pay thousands of dollars for the preparation and review of an EIS of average length.⁽¹¹⁾ Where cost-benefit analyses are required, costs are higher.⁽¹²⁾

Wisconsin's statute again provides a good example of a SEPA with financial problems. Initially no implementation funds were provided by either the legislature or the governor. Early budget estimates projected that the total cost for implementing the statute in fiscal 1972-73 would be \$71,000, and that costs thereafter would not increase dramatically. The accuracy of this estimate was not good. For fiscal 1974-75 the direct cost of implementing the SEPA came to over \$600,000, which prompted some analysts of the fiscal crunch to observe:

It may be impossible for the state to provide "full" funding for WEPA, and, thus, even under the best of circumstances, state agencies will have to choose which of their actions warrant the expenditure of impact statement funds. However, without even minimal funding, these resource choices become more severe. They may often result in allocative decisions which do not produce usable information for decision-makers and therefore, do not fulfill the goals of the statute.⁽¹³⁾

Defects in the statutes and lack of funding for their implementation have led several other states to do little with their environmental protection laws.

In Wisconsin, the first informal WEPA guidelines provided by the governor left the agencies in disarray. It took over a year for the newly-appointed WEPA coordinating committee to provide a uniform set of instructions to the confused agencies.

According to the authors' survey, Wisconsin is not the only state which never cleared this initial hurdle of establishing a coordinating committee or of promulgating regulations. Connecticut, for example, explained that it was still "in the preliminary stages of drafting...regulations", since not until 1977 did its State Department of Environmental Protection have authority to promulgate regulations to implement the statute. The Maryland Department of Natural Resources reported that the state act "...has no teeth at all - no sanctions to be invoked when avoidance may be alleged....We are probably at mile-one on a five mile course". The Montana Environmental Quality Council has authority only to adopt advisory guidelines. There, uniform rules have been proposed by the Governor's Commission on Environmental Quality, but they have not yet been adopted by all the agencies in the state. Finally, the South Dakota Planning Bureau candidly stated that "because of its vague and general character, [its SEPA] has not been interpreted by state agencies as having a wide degree of applicability. No rules or regulations pertaining to this statute have been promulgated as of this time".

Even where a clearinghouse exists, however, and where regulations have been promulgated, the EIS preparation and review process can entail procedural difficulties. Observers in the state of Washington, for example, have been moved to remark about the "wasteful, disorganized procedures now in effect in many governmental units...."(14) They state, however, that problems in implementing SEPAs are not peculiar to Washington.

Without adequate funding enabling agencies to hire, as salaried employees or by contract, the necessary expertise to administer and enforce environmental assessment laws, those laws are little more than pages in statute books, or bureaucratic headaches. With respect to tangible environmental protection...they are largely meaningless.(15)

Similar responses were encountered when state officials were surveyed on their perception of the effectiveness of the state EIS review. Two typical responses follow:

Presently EIS is a massive exercise in paper shuffling. Those EISs which are controversial are frequently so complex, verbose and technical that many people feel intimidated. There should be some means of reducing the number of EISs to permit a realistic analysis of the controversial projects.

The environmental impact statement process has become paper heavy. Substantial documents are produced and it becomes very difficult to provide detailed review of these documents. Consequently, a project which may be undesirable from the long range environmental view could produce a very massive document, thereby preventing detailed analysis.(16)

Even the Council of State Governments concluded that "[i]n terms of its coordinative impact, ...it does not appear that EIS has been highly effective, at least to date"(17) The Council hoped, in conclusion, that although it had failed as an element in the decision-making process, the EIS might at least prove to be a useful springboard for substantive legal challenges by environmentalists. Unfortunately, as will be seen later in the analysis of the various highway cases arising from the federal act or its state counterparts, more often than not this hope has not materialized.

Public interest lawyers and the federal courts have built a substantial body of case law on the NEPA. Litigation under the various SEPAs has been less frequent due to the lack both of statutes themselves and of effective implementation of existing statutes. Critics of the SEPAs, recognizing the costs in time and money of the EIS preparation process, complain that these state laws are impossible to justify if they serve as nothing more than paper-generating procedural roadblocks.(18) Already, before most SEPAs are five years old, state officials complain that EIS review is often no more than a cumbersome decision-justifying process, and is of no help at all in project planning.(19) Presumably the state courts might act to remedy this situation. Yet, after reviewing the existing SEPA based cases, many analysts are forced to conclude that "there has been no significant litigation at the state level to establish the substantive effect of environmental assessment laws".(20)

THE VIRGINIA ENVIRONMENTAL QUALITY ACT

The Code of Virginia, Title 10, Chapter 17, entitled "Virginia Environmental Quality Act", sets forth the General Provisions and the Declaration of Policy, and establishes the Council on the Environment. Title 10, Chapter 1.8, concerning environmental impact reports of state agencies, establishes a procedure whereby the Council can ensure compliance with the Act.

In June 1976 the Governor's Council on the Environment published "Procedures Manual and Guidelines for the Environmental Impact Statement Program in the Commonwealth of Virginia". Part I of this manual sets forth the background of the EIS program and

the respective responsibilities of the Council, the agencies preparing the statements, and the agencies reviewing them. Part II explains the purpose of the EIS program, the format and data requirements for the statements, and the proper use of the guidelines. Also set out in Part II are supplemental guidelines developed by four of the reviewing agencies.

One noteworthy similarity between the NEPA and the Virginia Environmental Protection Act is that neither contains specific requirements for evaluating the EIS. Both acts allow reviewing agencies to establish their own criteria. As pointed out earlier, more and more agencies in the federal government are interpreting their authority under the NEPA quite liberally, which tends to cause unwieldy administration of the federal act. The same trends may develop in the state's program. Certainly none of the supplementary guidelines for Virginia contained in the Procedures Manual developed by the Governor's Council are very specific.

The one major difference between the Virginia statute and the NEPA and environmental acts of the other seventeen states is that the Virginia law exempts the activities of road and highway construction from the EIS review process. Under Section 10-17, 107(b) of the Virginia law it is stated that "any highway or road construction or any part thereof", is not considered to be part of the definition of "Major State Facility". Consequently, the Virginia Department of Highways and Transportation has been exempted from filing formal written documents on many of its activities. It should be noted, however, that the construction by the Department of rest facilities, office buildings, and other non-road or non-highway construction projects are subject to statutory filing requirements.

VIRGINIA DEPARTMENT OF HIGHWAY AND TRANSPORTATION
POLICY AND ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION

The typical highway construction project is very different from standard projects submitted for evaluation by many state agencies. Many of the statements sent to the Governor's Council on the Environment address site-specific or local area impact. For example, an EIS for construction of a building will examine the building's impact upon the air and water quality and noise level of no more than the immediate locality. The use and users of the facility can be defined within reliable limits, and the community that will be affected can be narrowly specified. Most highway projects are far more complex. The typical facility spreads over many miles and may have varying degrees of impact

at points along the way. Community lines are difficult to define and the social and economic impacts are far-reaching. For these reasons the Department has established its Environmental Quality Division staffed with personnel knowledgeable about evaluations of highway projects.* They hold degrees and have expertise in such areas as planning, engineering, biology, physics, forestry, economics, and landscaping. This Division prepares Department impact evaluations and monitors the activities of consultants hired by the Department to study proposed road facilities. Therefore, the projects of the Department are evaluated by a group of professionals with high qualifications and wide experience. It is noted that the Department has been involved in the preparation of EISS, communication with other state agencies, and negotiations with federal agencies since the passage of the NEPA in 1970.

Since its establishment in 1970 the Environmental Quality Division has requested forty-six research studies in a broad range of environmental areas to enhance its evaluations of the effects of highway and transportation projects. Among these studies were those listed below.

- Virginia's Use of Remote Sensing in the Preliminary Aerial Survey-Highway Planning Stage
- Primer on Noise
- Erosion Prevention During Highway Construction by the Use of Sprayed on Chemicals
- A Primer on Motor Vehicle Air Pollution
- Stabilizing Disturbed Areas During Highway Construction for Pollution Control
- Verification of MICNOISE Computer Program for the Prediction of Highway Noise
- Sequential Air Sampler System — Its Use by the Virginia Department of Highways and Transportation
- Sources of Virginia Meteorological and Air Quality Data for Use in Highway Air Quality Analysis with Comments on Their Usefulness
- An Ecological Assessment of a Bridge Demolition
- The Theory and Mathematical Development of AIRPOL-4
- Manual for Establishing a Vegetative Cover in Highway Corridors of Virginia

*See Appendix A for organizational chart.

- Installation of Straw Barriers and Silt Fences
- Controlling Erosion along Highways with Vegetation or Other Protective Cover
- Assessment of Pedestrian Attitudes and Behavior in the Suburban Environment
- Relocation Due to Highway Takings: A Diachronic Analysis of Social and Economic Effects

For a complete listing of the research studies requested (See Appendix B.)

The operation of the Virginia Department of Highways and Transportation is different from that of any other state agency simply because construction and maintenance are its primary activities. In the case of other agencies, project delays due to the EIS review might postpone the construction of an office building planned to facilitate agency operations; by contrast, delays created for the Department affect its entire operation.

The uniqueness of the Virginia Department of Highways and Transportation's highway construction function does not imply that it should be exempt from the requirements of the NEPA or that it should not shape its policy and practices to conform to the goals of the Virginia Environmental Protection Act. Under its evaluation system as outlined below, the Department meets or exceeds the objectives set forth in the "Procedures Manual Guidelines for the Environmental Impact Statement Program in the Commonwealth of Virginia". Any requirements for preparing EISs would be superimposed upon the existing trifurcated evaluation system.

Department's Internal Review Process

Interviews with officials of the Department and a study of over 100 files on completed, current, and planned projects have revealed that the Department conducts environmental evaluations on all projects costing in excess of \$100,000 and on projects considered likely to affect the environment significantly. Table 2 demonstrates the degree to which environmental evaluation and procedural requirements are a part of the hearing and permit process for both federal participating and state funded projects.

Aside from this compliance with the spirit of the environmental requirements imposed upon the activities of all state agencies in Virginia, the Department must be ready to submit an

Table 2
Department Permit and Hearing Requirements for Federal and State Projects

Factor	Federal Projects	State Projects
Air Pollution	Indirect Source Permit 42 USC §1857 d	Indirect Source Permit SAPCB Va. Code §10-17.21 No State Standards
Noise Pollution	Federal Abatement Requirements 42 USC §1858	
Water Quality	401, 404, Subaqueous bed permit, Coast Guard/MRC/SWCB/COE/VIMS after completion of EIS Pending Coastal Zone Management 33 USC §§ 1341, 1344 Consultation with U.S. Fish & Wildlife Service DOI 33 USC § 407 & Executive Order #11574 (1970) Consultation with USEPA 42 USC § 4321 et seq. & Executive Order #11574 (1970)	401, 404, Subaqueous bed permit, Coast Guard/MRC/SWCB/COE/VIMS, before advertising. Pending Coastal Zone Management 33 USC §§ 1341, 1344 Consultation with U.S. Fish & Wildlife Service DOI 33 USC § 407 & Executive Order #11574 (1970) Consultation with USEPA 42 USC § 4321 et seq. & Executive Order #11574 (1970) Va. Code § 62.1-3 and Va. Code § 33.1-117
Historic Landmarks	4(f) Federal requirement and 106 procedure 16 USC § 470, Executive Order #11593 (1971)	No state standard but consultation with VHLC requested
Archaeological Sites	Clearance required 16 USC § 460GG-7	Permit from VHLC & VRCA Va. Code § 10-150.5
Community & displacement	R/W law 42 USC § 4630	R/W law Va. Code §§ 25-235 et seq.
Public Hearing	Yes	Yes
Administration of document	Yes	No
Decision from outside agency	Yes	No

LEGEND

- COE — U. S. Corps of Engineers
- DOI — U.S. Department of the Interior
- EPA — U.S. Environmental Protection Agency
- FWS — U.S. Fish and Wildlife Service, Department of the Interior
- MRC — Virginia Marine Resource
- SAPCB — State Air Pollution Control Board
- SWCB — State Water Control Board
- VHLC — Virginia Historic Landmarks Commission
- VIMS — Virginia Institute of Marine Science
- VRCA — Virginia Research Center for Archaeology

environmental document to the federal government in the event a project initially planned to be state funded should require federal funding. A switch from total state funds to federal participating funds or vice versa is always a possibility because of the complexity of the fiscal planning for a highway project, the uncertainty of revenue, and the long time period required to get a project from the planning phase to the construction phase.

Shifts in funding have been noted in the review of the previously mentioned project files for the following reasons:

1. The federal government was not able to participate in the funding of a toll facility; e.g. the Richmond Metropolitan Authority's Downtown Expressway.
2. The proposed project was urgently needed by a local government and the federal review time was unacceptable for its needs.
3. The federal funds allocated for a specific program were used up and state funds were available in the district in which the project was planned.
4. State revenues were lower than anticipated, and delays in the start of construction on the project could be tolerated.

The need for flexibility in planning the funding of projects is obvious. But on all significant projects for which state funds are substituted for federal funds to avoid delays occasioned by the federal EIS review, the Department accumulates and evaluates data on environmental impacts.

Review by the Attorney General

In addition to the scrutiny given to road and highway projects within the Department, the Legal Division assigned to the Department by the Attorney General of the Commonwealth reviews those projects with significant legal implications and is also constantly available for consultation. Because the attorneys in this division are experienced in the legal ramifications of road and highway construction, they are alert to any problems that may develop or complaints that might be filed as a result of some anticipated undesirable environmental impact from a proposed construction project.

Because of the complexity of highway projects, evaluations of their environmental impact involve correspondence with other state agencies. Many times the same permits are obtained for state as for federal projects; consequently, many state agencies have an opportunity to comment upon all Department projects. Table 2 compares the evaluation standards for state funded and federally funded projects. In many instances in which there are no state requirements for environmental review, the Department uses federal standards as a guide. Table 3 summarizes the number of comments made by the Department and other state agencies on EISs submitted to them over the last two years by the Council on the Environment. Only the Water Control Board, Department of Health, Air Pollution Control Board, Soil and Water Conservation Commission, Department of Highways and Transportation, and Historic Landmarks Commission replied, on average, to more than half of the documents. These agencies are among those which must be contacted on most road and highway projects requiring permits. The EIS review would be a duplication of effort in these cases.

An opinion survey of most of the agencies listed in Table 3, which was conducted by the Council on the Environment, indicated strong support for continuation of the Department's exemption. Generally, the other agencies indicated that the Department conscientiously considers the environmental consequences of its activities, and that the costs of removing the exemption would far outweigh any benefits realized. (See Appendix C.)

Table 3

Record of Replies by State Agencies on Documents Referred to them
for Comment by the Governor's Council on the Environment

<u>Agency</u>	<u>Percentage Reply in 1976</u> <u>(24 documents submitted)</u>	<u>Percentage Reply in 1977</u> <u>(14 documents submitted)</u>
Division of Aeronautics	4	0
Division of Industrial Dev.	25	14
State Water Control Board	100	93
State Dept. of Health	96	79
Commission of Game & Inland Fisheries	46	14
Marine Resource Commission	38	22
Air Pollution Control Board	58	79
Va. Institute of Marine Science	38	14
Soil and Water Conservation Comm.	92	79
Coastal Zone Management Program ^a	0	0
Commission of Outdoor Recreation	54	14
Historic Landmarks Commission	46	72
Department of Agriculture & Commerce	46	29
Virginia Port Authority	14	7
Va. Dept. of Highways & Transportation	100	100
Virginia Energy Office	38	7
Va. Research Center of Archeology	9	36
Office of Outer Continental Shelf Activity ^a	0	0
State Planning & Community Affairs ^b	33	0

^aRecently established

^bAgency no longer exists due to reorganization

Review by the Public

The Department routinely informs the public of all significant projects, and gives concerned citizens a chance to comment early in the decision process by publishing notice of its "willingness to hold a public hearing" (see Appendix D). In response to requests, various informal and formal hearings are held. Public participation and comment are encouraged by the district and resident engineers and their staffs. Additionally, the Department has conducted numerous research projects to evaluate and improve its public involvement procedures and has formed a committee to review its procedures so as to assure continuing responsiveness to the needs of the citizens. The major research projects were:

- Citizen Participation via the Public Hearing: A Study of the Public Hearing Process in 50 State Transportation Agencies
- Citizen Participation and the Role of the Public Hearing
- Evaluation of Social Impact: A Suggested Approach
- Highway Engineers Assess the Public Hearing Process

Effectiveness of the Evaluation Process

In the last four years, the Department has been involved in the construction of approximately 800 state funded projects. All have undergone Departmental evaluation, evaluations by other agencies, and extensive public examination. Many have undergone scrutiny by the Attorney General's Office. The only litigation on state funded projects to date has involved determinations of fair market values for the purchase of rights-of-way. No lawsuit alleging environmental degradation has yet been filed in Virginia to stop construction of a state funded project, although such suits are as possible in this state as they are in others.

COST OF POSSIBLE DELAYS IF DEPARTMENT'S EXEMPTION WERE TERMINATED

If Virginia's Environmental Quality Act were revised to require that the Department file EISs on major road and highway projects, costs of delays in the form of the time needed for reviews of the statements and possible litigation could be very high. If as was the case under NEPA, the requirement that the Department begin to file EISs is imposed retroactively, still greater costs would be incurred.

Delays Due to Review of EISs

The time needed to review EISs for those projects now exempted would probably add a year to the already lengthy highway planning process. This estimate of a one-year delay because of communications necessary in the review process is based upon the probable effect of the addition of approximately 400 projects (see Table 4) onto the present EIS review work load, if no additional staff is employed by either the CEQ or the reviewing agencies. Also, the experience with the federal review process indicates an average of a two-year delay with EIS final and draft documents. The review time would be lengthened still further if the federal government were to refuse to become involved in any highway project review process until all environmental statements, including negative declarations and non-major actions, were processed through the state CEQ. The Federal Highway Administration could justify such a policy on the grounds that it would thereby automatically avoid the embarrassing situation of having approved a Department project, be it a major or a non-major action, which the state CEQ subsequently disapproved.

Assuming, then, that an extra year would be required for the review of the EISs for "Major State Facility" projects and adjusting for additional delay caused by litigation for a few projects, the costs of these delays can easily be determined by reference to price indexes for the industry. "Price Trends for Federal-Aid Highway Construction", a publication of the Federal Highway Administration, gives an index of contractors' costs (composites of labor, materials, and equipment ownership costs) from 1940 through 1976. Table 5 shows the percentage of increase realized in any highway project during the years from 1970 through 1976.

A number of observations can be drawn from this table. First, although the enormous surge in the index for the years 1974 and 1975, attributable to the oil crisis, can be characterized as atypical, as long as oil shortages and their ramifications persist similar increases in the future are within the realm of possibility. Percentage increases from 1970 through 1976 ranged from 2% to 22%, while the average increase over all of these years was 9%. Even in the years before the oil crisis the average annual increase was 6%. The rate of inflation in highway construction costs appears to have been on a downward trend since 1975; however, information now available for 1976 shows a gradual increase.

The cost of delay can be demonstrated dramatically by applying the percentage increase in cost figures to the total budgets for Virginia's highway construction projects scheduled to be advertised in the years Oct. 1, 1976, through Sept. 30, 1977, and Oct. 1, 1977, through Sept. 30, 1978, as depicted in Table 6.

Table 4

Typical Program with Projects in the
"Major State Facility" Category

<u>State Projects</u>	<u>Number Scheduled for Oct. 1, 1977 - Sept. 30, 1978</u>
Primary	53
Secondary	43
Urban	20
Maintenance & Miscellaneous	88
Subtotal	<u>204*</u>
<u>Federal Project in the Major State Facility Category</u>	
Environmental Considerations	8
Non-Major Actions	153
Draft Negative Declarations	24
Final Negative Declarations	28
Section 4(f) Documents	0
Section 106 Documents	3
Draft Environmental Impact Statements	2
Final Environmental Impact Statements	2
Subtotal	<u>220</u>
TOTAL	424

*Total cost of state budget for these projects is approximately \$109.6 million.

Table 5
Contractors' Cost Index

<u>Year</u>	<u>Index of Contractors' Cost (1940 base)</u>	<u>Annual Percentage Increase Above Previous Year</u>
1970	251.8	—
1971	270.0	7.2
1972	284.9	5.5
1973	297.9	4.6
1974	364.2	22.3
1975	404.8	11.1
1976	413.8	2.2

Table 6
Average State Funded Highway Projects
(Based on 1977-78 Schedule)

<u>Year</u>	<u>No. of Projects</u>	<u>Estimated Dollar Cost (in millions)</u>
1977	177	\$ 67.2
1978	204	109.6
Average Budget	191	88.4

Based on these figures, the cost to the Commonwealth of a delay of one year in all state highway projects could be as much as \$19,713,200 in an average budget year, if the inflation rate were ever again to climb to its 1974 level of 22%. An annual inflation rate of 9% would cost Virginia nearly \$8 million if its highway projects were held up for a year. Even a 6% inflation rate would raise the budget for all state funded projects an average of \$5.3 million annually.

It is clear that the consequences of delays of the magnitude described above would run contrary to the best interests of the Commonwealth. To the extent that additional personnel could be employed to review highway project EISs, the overload on the state reviewing system could be accommodated, and some delay would thereby be eliminated. However, those delays due to subsequent federal review, additional litigation, and the time needed for the Department to reply to comments generated by the reviews would remain unchanged. The authors' estimates of the additional man-hours needed to process the Department's state project EISs are based upon the assumptions which follow.

1. An average of 400 additional projects will be introduced annually into the present EIS process. This assumption must be made because there are presently no established criteria for determining which projects will require complete EISs and which will not.
2. The man-hours needed for the preparation of EISs on the additional 400 projects will be required only by the Department. Most of this time will be needed for the preparation of EISs on state funded projects. (For federally funded projects, duplication of effort will be avoided wherever possible.) Draft and final EISs, negative declarations, and statements of non-major action prepared for federal purposes normally should suffice at the state level as well. Additional criteria would be needed, however, to determine if this would always be the case.
3. The cost of the increased man-hours needed for review and comment on these projects would be borne by the CEQ, the Department, and state reviewing agencies. Currently, there are approximately twenty participating agencies. Although the Department would not review its own projects more than it does at present, additional time would be required within the Department for considering the reviewing agencies' comments.

4. Based on the efforts of the Department's personnel involved in the preparation of EISs and in review and comment at both the federal and state levels, it has been determined that the average preparation time alone would be 15 hours per project. Review and comment would require approximately 10 more man-hours per project.
5. Since the people preparing the statements are highly qualified technical and administrative personnel, equally qualified people would be required to review and comment adequately upon the newly required EISs submitted by the Department. Therefore, the hourly wage which reflects the normal additive of approximately 32% has been estimated at \$10.

The man-hour calculations based upon the foregoing assumptions are set forth in Table 7.

Table 7

Estimated Man-hours for Preparation of Additional EISs and for Review and Comment

<u>Department's Preparation Time</u>	<u>State Project</u>	<u>Federal Project</u>
Number of projects	200	200
Hours per project	15	0
Total hours	<u>3,000</u>	<u>0</u>
<u>Review and Comment Time by Each of 20 Reviewing Agencies</u>		
Number of projects	200	200
Hours per project	10	10
Total hours	<u>2,000</u>	<u>2,000</u>

The total hours required to process the 400 projects would be the sum of the 3,000 hours to be spent by the Department, plus the 80,000 hours (4,000 x 20) to be spent by the twenty reviewing agencies. Thus an additional 83,000 man-hours would be required to process 400 statements without undue additional delay. These extra man-hours multiplied by the estimated \$10 hourly wage results in an additional annual labor cost, to state agencies of approximately \$830,000, if the Departments exemption from filing EISs for these projects were to be removed.

Possible Delays Due to Litigation

Aside from the delays required for the review of EISs on state projects, some of these proposed highway projects might be slowed or stopped altogether by lawsuits. The time periods possibly involved here are not easy to estimate, but they still must be taken into account, because by establishing administrative requirements which road and highway projects must comply with the number of avenues for litigation would undoubtedly be greatly increased. The following review of legal actions filed against state highway projects across the country gives some indication of the frequency of such lawsuits, the years of delay occasioned by many of them, and finally, the fact that in most cases the bases for suit have been minor procedural omissions and not substantive environmental damage. Projects delayed by debates over procedural matters could be completed only at a much greater cost to the Commonwealth than originally would be budgeted.

The cases examined for purposes of this study involved only highway construction EISs. Over one hundred federal and state highway cases have arisen during this first decade with environmental protection acts in force. Eight of these cases (four from California, three from Washington, and one from Wisconsin) have been based upon SEPAs instead of the federal act. The significance of these cases should not be overlooked, however, simply because they are few in number. One must remember that the SEPAs are both newer and in less widespread use than the federal act. Moreover, the effect on those projects which have been stalled by litigation has been and can be substantial. Delays in the SEPA based cases alone have ranged from a little over a year and a half [Plan for Arcadia, Inc. v Arcadia City Council, 117 Cal. Repr. 96 (1974); Cheney v City of Mountlake Terrace, 552 P. 2d 184 (Wash. 1976)] to, more frequently, well over three years [Leschi Improvement Council v Washington State Highway Commission, 525 P. 2d 774 (Wash. 1974); Robinson v Kunach, 251 N.W. 2d 449 (Wisc. 1977)] Delays of up to five or six years are not uncommon in cases stemming from the NEPA.⁽²¹⁾ Perhaps still more shocking are the facts, first, that the issues most frequently litigated are only procedural ones, and, second, that in each of the cases cited in the texts noted above and, indeed in approximately half of the NEPA or SEPA based highway cases reviewed here, the state or city highway planners ultimately won. As was noted in a bridge construction case decided early this year, highway departments have been sued all too often for not considering enough alternative proposals or for holding hearings too late in the planning process, or for failing to file the correct number of permit applications on time. The courts should "not...be led into construing the mandating statutes as 'a crutch for chronic faultfinding'..." Coalition for Responsible Regional Development v Coleman, 555 F 2d 398, 400 (4th Cir. 1977) citing Life of the Land v Brengar, 485 F 2d 460, 472 (9th Cir. 1973). Such cases do little to benefit the environment.

Admittedly, however, suits to stop highways, like all the other EIS based litigation, do deal most often with procedural requirements of the statutes. Judges in general will delve into substantive review only when an agency's actions are deemed to have been arbitrary and capricious. Few courts have stressed that "the emphasis in such suits should be on irreparable harm to the environment, not on procedural violations of NEPA".⁽²²⁾ Most courts, instead of striving to preserve environmental amenities, will examine matters like the ones categorized below.

1. The relative size or funding sources of projects which require environmental impact statements.
2. The time when the EIS should have been prepared, either with reference to the effective date of the relevant environmental protection act or in relation to the general planning and development stages of the project itself.
3. The highway segments, or the surrounding areas, for which the EIS was, or should have been, prepared.
4. The adequacy of consideration given to alternate routes.
5. The content, sufficiency, and accuracy of the basic research data supporting the ultimate decision of where to build.
6. The identity and lack of bias of the EIS preparers.
7. Miscellaneous points of compliance with the letters of the laws, such as adequacy of public notice, numbers of reviewing agencies, and formality or informality of the hearing procedures.
8. Questions involving the judicial role, such as the proper scope of each court's inquiry or review, and appropriate remedies to be awarded in each case.

Even given these discoveries based upon other states' experiences with SEPA lawsuits, it still is not easy to project what the Department's future in the state courts might be if its present exemption from filing state EISs were to be removed. Certainly the numbers of SEPA based cases during any given year in a particular state is a function of several

factors. The most obvious of these is the number of construction projects with significant environmental effect begun in the state during that year. Also important are the conscientiousness and efficiency of the agencies preparing and reviewing the EISs. The interested public is likely to move to block a project if its EIS is poorly researched, biased, inadequately publicized, or not timely prepared. Finally, suits are bound to multiply if their initial reception in the courts is a favorable one. A court's attitude, in turn, is often determined by the forcefulness of the legislative policy declaration in the act itself.

California, the first state to adopt a comprehensive environmental impact law, has the strongest declaration of environmental policy. The statute mandates that "the long-term protection of the environment shall be the guiding criterion in public decisions", (23) and the California courts have enforced this statute stringently. Washington's environmental policy act is also a strong one, and again the state supreme court has been fairly rigorous in enforcing it.

The continuing policy and responsibility of the state is not only to maintain and enhance our environment, but also to "prevent or eliminate damage to the environment" and "restore" it. (R.C.W. § 43.21C.010 - .030) The maintenance, enhancement, and restoration of our environment is the pronounced policy of this state, deserving faithful judicial interpretation. (24)

SEPA's passed later in the decade, however, seem markedly less concerned with the primacy of environmental issues. Agencies are charged with an awareness of the environment and a duty to protect it, but that duty is not deemed to be the "guiding criterion" of the decision-making process. Since Virginia's statute is one of these more moderate ones, it seems likely that the courts of the Commonwealth would more often than not strike down any challenges raised against the Department's research methods, project publication, EIS preparation, or ultimate route choices.

FUNDING PROBLEMS

Finally, because of the importance, complexity, and size of road and highway projects, the Commonwealth has given authority to the Highway and Transportation Commissioners and Commissioner to direct the scheduling and funding of the Highway and Transportation Department's activities. In addition, a special fund

(the Highway Construction and Maintenance Fund) has been established by Va. Code §33.1-23.1 et seq. in an attempt to stabilize the highly variable factors, such as fluctuating revenues, involved in road and highway planning and construction. A termination of the Department's exemption would tend to transfer that authority from the Highway and Transportation Commission to the CEQ and other agencies, and thereby negate the stability established by the Highway Construction and Maintenance Fund by subjecting it to the intrinsic delays and unpredictability of the EIS review process.

CONCLUDING COMMENTS

From the foregoing, it can be said that there are at least four reasons why the Department should be exempt from filing EISs for state funded projects. The first, and most obvious, is that because the Department's major activity is construction and maintenance of highway projects costing in excess of \$100,000, that is, "major state facilities", the need to go through the lengthy EIS review process for all of these projects, with the accompanying delays and increased costs, would disrupt planning and operations throughout the Department.

The second reason is that because of its continual concern with environmental matters, the Department has its Environmental Quality Division conduct environmental evaluations of all significant projects, including both construction projects requiring large financial investments and less costly projects having a potentially undesirable impact on the environment. Additionally, these projects are scrutinized by the Attorney General's Office, other state agencies, and the public. Consequently, much, if not all, of the pro forma EIS review on the state level would be redundant.

The third reason for maintaining the exemption is the high penalty in increased costs to the Commonwealth and its citizens that most likely would result from requiring EISs on all the Department's now exempted projects, which are estimated to be 400 each year. The increase would be in the form of inflation during delays due either to the review process or to possible lawsuits filed under Virginia's SEPA, and the salaries of people who would have to be hired to prepare and review the draft and final statements and to represent the Department in the lawsuits possibly stemming from them. Most of this additional expense might in fact be considered needless, since, as noted above, possible environmental impacts are considered when these projects are planned, reviewed, and approved.

Finally, the Department's exemption is warranted in part because of its special method of funding highway projects in advance of their construction. In this area, too, the imposition of requirements for filing EISs would bring instability, unpredictability, and expensive delay into a system which functions very well without them.

FOOTNOTES

- 1 Seventh Annual Report of the Council on Environmental Quality, p. 133 (1976)
- 2 Sixth Annual Report of the Council on Environmental Quality, p. 637 (1975)
- 3 Yost, NEPA's Progeny: State Environmental Policy Acts, 3 Env. Law Reporter 50090 (1973)
- 4 Hill, "Midpoint of Environmental Decade: Impact of National Policy Act Assessment," N.Y. Times, Feb. 18, 1975, at 14, col. 3, cited 15 Washburn Law Journal 64, n. 1 (1976)
- 5 "Staff Report on the Exemption of Highway and Road Construction from the Requirements of the State EIS Law," Virginia Council on Environmental Quality, Sept. 1, 1977, at 6. Only twenty-two states were listed in the cited appendix to this report.
- 6 This information is based in part on a report by the Council of State Governments which lists the states with executive order environmental impact statements as follows: Michigan, New Jersey, Texas, and Utah. See T.L. Beyle, Integration and Coordination of State Environmental Programs. New Jersey, however, responded to the authors' questionnaire with no more than a copy of the state EIS requirements for coastal zones and wetlands. This response would seem to indicate that the state has a far less than comprehensive SEPA. Utah did not respond.
- 7 Either by legislative fiat or by judicial interpretation, California, Hawaii, Massachusetts, North Carolina, South Dakota, and Washington all include private as well as state actions within their requirements for EISs. See 15 Washburn Law Journal 64, 68-71 (1976).
- 8 1977 Wisc. Law Rev. 111, 118-19 (1977), citing the floor debate over passage of the Wisconsin SEPA.
- 9 See Comment, "The Rise and Demise of the New Mexico Environmental Quality Act, 'Little NEPA'," 145 Nat. Res. J. 401 (1974)
- 10 1977 Wisc. Law Rev. 111, 124-26 (1977)
- 11 See the body of this report for estimates of costs in Virginia. Other figures have been prepared by the Department of Natural Resources, which estimated that preparation and reviewing costs averaged from \$6,400 to \$8,600 per statement in 1972. Even at those rates, DNR insisted that "financial relief must be provided to state agencies if they are to fully comply with the spirit of the new environmental impact laws." See DNR, "Environmental Impact Procedures: Summary of DNR Progress" (Sept. 19, 1972). In response to the survey of states, Michigan and

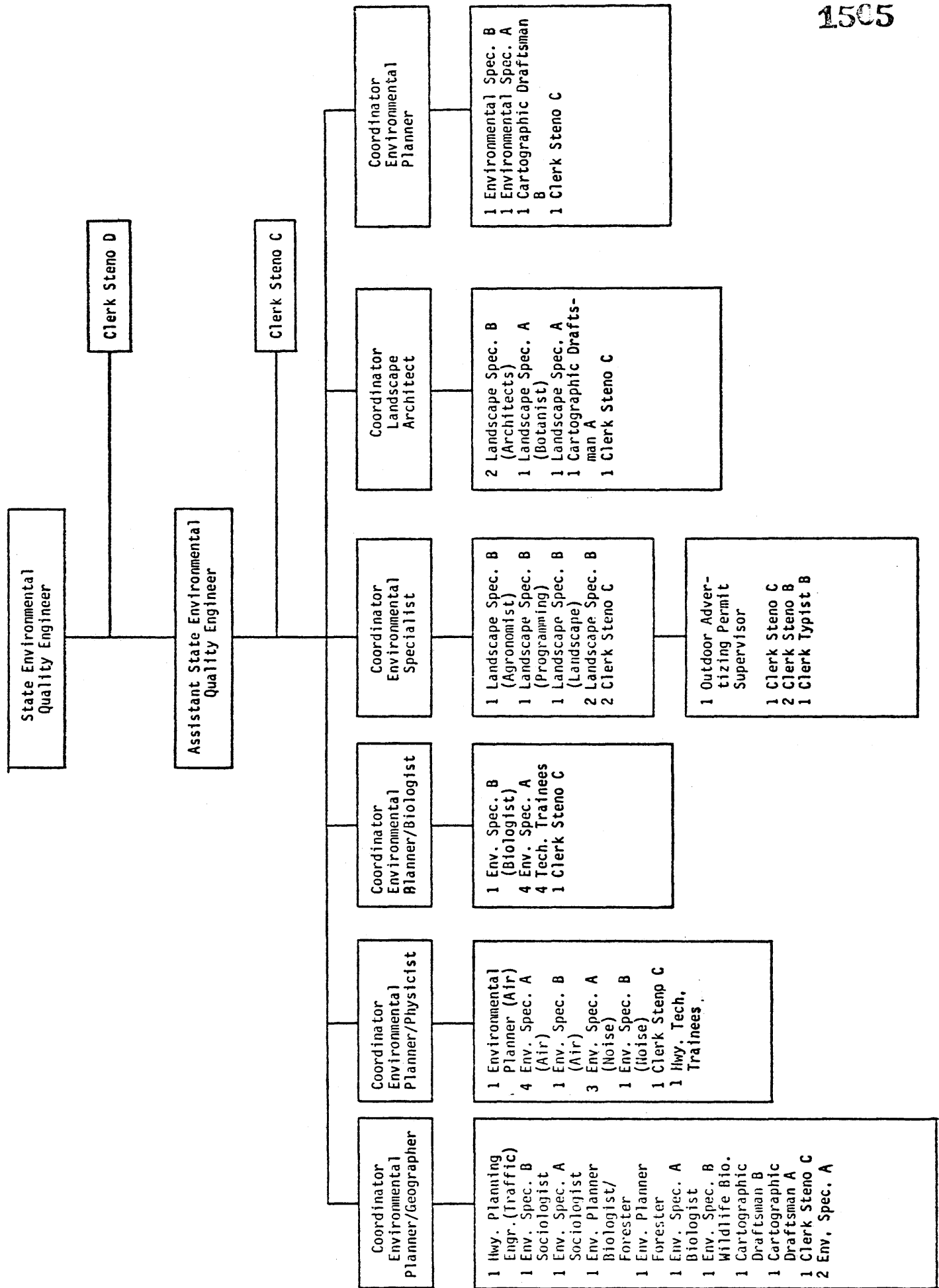
Wisconsin stated that costs for the state coordinating committees alone ran between \$60,000 and \$70,000. In Massachusetts the annual costs for 50 draft and final EISs totaled \$160,000 in fiscal 1977.

- 12 EISs in Connecticut, Texas, and Wisconsin must include a summary of costs and benefits of the proposed action. The survey obtained no preparation cost estimates from the last two states, but Connecticut answered that consultants' cost for preparing an EIS for a \$9 million urban flood control project was over \$60,000. In-house evaluation for a shorefront park expansion alone took two man-years.
- 13 1977 Wisc. Law Rev. 111, 128 (1977).
- 14 (15) Washburn Law Journal 64, 79 (1976)
- 15 Id. at 78.
- 16 T.L. Beyle, "Integration and Coordination of State Environmental Programs," (Council of State Governments, 1975) at 73
- 17 Id. at 74.
- 18 (15) Washburn Law Journal 64, 87 (1976).
- 19 Anderson, NEPA in the Courts, A Legal Analysis of the National Environmental Policy Act 288 (1973)
- 20 (15) Washburn Law Journal 64, 87 (1976).
- 21 See Brooks v. Volpe, 460 F.2d 1193 (Wash. 1972), 350 F. Supp. 269, 380 F. Supp. 1287, rev'd sub nom. Brooks v. Coleman, 518 F.2d 17 (1975) (delay of 5 years); Conservation Society of Southern Vermont v. Volpe, 343 F. Supp. 761 (Vt. 1972), 362 F. Supp. 627 (1973), 508 F.2d 927 (1974) (four year delay); Stop H-3 Ass'n v. Volpe, 349 F. Supp. 1047 (Hawaii 1972), 353 F. Supp. 12, 387 F. Supp. 1102 (1974), 533 F.2d 434 (1976) (six-year delay).
- 22 Hawthorne Environmental Preservation Associates v. Coleman, 417 F. Supp. 109 (Ga. 1976).
- 23 Cal. Public Resources Code § 21001 (d).
- 24 Eastlake Community Council v. Roanoke Ass'n Inc., 82 Wash. 2d 475, 485, 513 P.2d 36, 46 (1973).

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6. McGuire, C.L., "Emerging State Programs to Protect the Environment: 'Little NEPA's' and Beyond." 5 Environmental Affairs 567 (1976).
7. Hagman, Donald G., "NEPA's Progeny Inhabit the States: Were the Genes Defective?" 7 Urban Law Annual 3 (1974).
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9. "State Environmental Impact Statements," 15 Washburn Law Journal 64 (1976).
10. "Agency Decisionmaking Under the Wisconsin Environmental Policy Act," 1977 Wisconsin Law Review 111 (1977)
11. Yost, Nicholas C. "NEPA's Progeny: State Environmental Policy Acts," 3 Environmental Law Reporter 50090 (1974).

Environmental Quality Division
Organizational Chart



1506

APPENDIX B

ENVIRONMENTAL RESEARCH REPORTS BY
VIRGINIA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION1972

- 1 Virginia's Use of Remote Sensing in the Preliminary Aerial Survey -- Highway Planning Stage, by D.F. Noble, January 1972
- 2 Primer on Noise, by D.F. Noble, February 1972
- 3 Assessment of Air Quality Impact of a Proposed Section of Interstate 66, by G.G. Clemena and W.N. Carpenter, March 1972
- 4 Erosion Prevention During Highway Construction by the Use of Sprayed on Chemicals, by D.C. Wyant, W.C. Sherwood and H.N. Walker, July 1972
- 5 Verification of Methods to Predict Highway Noise, by D.F. Noble and W.A. Carpenter, October 1972

1973

- 6 A Primer on Motor Vehicle Air Pollution, by G.G. Clemena, March 1973
- 7 Highway Noise Reduction Barriers--A Literature Review, by E.G. Kerby II, July 1973
- 8 Stabilizing Disturbed Areas During Highway Construction for Pollution Control, by J.T. Green, J.M. Woodruff, and R.E. Blaser, December 1973

1974

- 9 A Method for the Design and Maintenance of Temporary Siltation Controls During Highway Construction, by D.J. Poche, January 1974
- 10 Effectiveness of Trees and Vegetation in Reducing Highway Noise--A Literature Review, by E.G. Kerby II, January 1974
- 11 An Evaluation of the Erosion-Siltation Control Program of the Virginia Department of Highways--Summer 1973, by W.C. Sherwood and D.C. Wyant, February 1974

- 12 Verification of MICNOISE Computer Program for the Prediction of Highway Noise, by J.K. Haviland, D.F. Noble, and H.L. Golub, March 1974
- 13 A Design Program for the Estimation and Abatement of Soil Losses from Highway Slopes, by D.J. Poche, May 1974
- 14 Area Computer Model for Transportation Noise Prediction: Phase I--Adaption of MICNOISE, by J.K. Haviland, June 1974
- 15 Manual on Erosion and Sedimentation Control, by W.C. Sherwood, August 1974
- 16 Area Computer Model for Transportation Noise Prediction: Phase II--Improved Noise Prediction Methods, by J.K. Haviland and Dan Sullivan, October 1974
- 17 Short-Term Air Quality Monitoring Around Proposed Interstate Route I-595, Arlington, Virginia, by G.G. Clemena, G.T. Gilbert, and Peter Mehring, October 1974

1975

- 18 Sequential Air Sampler System--Its Use by the Virginia Department of Highways and Transportation, by G.G. Clemena, February 1975
- 19 The Effects of Stream Channelization on Bottom Dwelling Organisms, Phase I Report, by D.C. Wyant, February 1975
- 20 User's Manual for the NOISE 1 Area Computer Program for Transportation Noise Prediction, by Dan Sullivan and J.K. Haviland, February 1975
- 21 Sources of Virginia Meteorological and Air Quality Data for Use in Highway Air Quality Analysis with Comments on Their Usefulness, by E.G. Kerby, April 1975
- 22 An Ecological Assessment of a Bridge Demolition, by D.J. Poche and Barbara Hensley, May 1975
- 23 The Theory and Mathematical Development of AIRPOL-4, by G.G. Clemena and W.A. Carpenter, May 1974
- 24 Area Computer Model for Transportation Noise Prediction: Phase II--Improved Noise Prediction Methods, by J.K. Haviland and Dan Sullivan, June 1975
- 25 Analysis and Comparative Evaluation of AIRPOL-4, by G.G. Clemena and W.A. Carpenter, June 1975
- 26 Effect of Pavement Texture on Tire-Road Noise, by D.F. Noble, July 1975

- 27 The Design of Temporary Sediment Controls for Soil Losses from Highway Cut Slopes, by David J. Poche, Revised August 1975
- 28 Manual for Establishing a Vegetative Cover in Highway Corridors of Virginia, by D.L. Wright, H.D. Perry, J.T. Green, Jr., and R.E. Blaser, October 1975
- 29 Vegetation Control Manual, by J.S. Coartney, W.E. Chappell, and J.B. Will, October 1974
- 30 The Design of Temporary Sediment Controls with Special Reference to Water Quality, by David Poche, August 1975
- 31 Supportive Data and Methods for the Evaluation of Airpol-4, by W.A. Carpenter, G.G. Clemena, and W.R. Lunglhofer, May 1975
- 32 The Effects of Stream Channelization on Bottom Dwelling Organisms, Phase 2 Report - "1975 Construction Season", by D.C. Wyant, 1976
- 33 A Manual for the Application of Statistics in Air Quality Analysis for Highway Projects, by G.G. Clemena, 1976
- 34 AIRPOL-4A --An Introduction and User's Guide, by W.A. Carpenter, G.G. Clemena, and L. Heisler, 1976
- 35 Final Report--Evaluation of Erosion and Siltation Control Fabrics, by David C. Wyant, June 1976
- 36 Installation of Straw Barriers and Silt Fences, by D.C. Wyant and W.C. Sherwood, September 1976
- 37 Controlling Erosion along Highways with Vegetation or Other Protective Cover, by Wright, Perry, and Blaser, 1976

1977

- 38 Assessment of Pedestrian Attitudes and Behavior in the Suburban Environment, by Michael Demetsky and Michael A. Perfater, 1976
- 39 Relocation Due to Highway Takings: A Diachronic Analysis of Social and Economic Effects, by Michael Perfater and Gary Allen, 1976
- 40 Virginia's Relocation Experience: A Look at the Districts, Michael Perfater and Gary Allen, 1976

APPENDIX C
RESPONSES TO
Council on the Environment Survey



COMMONWEALTH of VIRGINIA

SUSAN T. WILBURN
ACTING ADMINISTRATOR

Council on the Environment

903 NINTH STREET OFFICE BLDG
RICHMOND 23219
804-786-4500

October 5, 1977

M E M O R A N D U M

TO: Mr. Oscar H. Adams, State Department of Health
 Mr. Thomas A. Barnard, Jr., Virginia Institute of Marine Science
 Mr. Rob R. Blackmore, Commission of Outdoor Recreation
 Mr. Raymond E. Bowles, State Water Control Board
 Mr. Donald W. Budlong, Coastal Resources Management Program
 Mr. M. V. Craft, Virginia Port Authority
 Dr. Berkwood M. Farmer, Department of Agriculture and Commerce
 Dr. William M. Kelso, Virginia Research Center for Archaeology
 Mr. Norman E. Larsen, Marine Resources Commission
 Mr. Louis R. Lawson, Jr., Virginia Energy Office
 Mr. James F. McInteer, Commission of Game and Inland Fisheries
 Mr. Bruce B. Meador, Department of Conservation and Economic
 Development
 Mr. James C. Reuhrmund, Air Pollution Control Board
 Mr. Gerard Seeley, Jr., Soil and Water Conservation Commission
 Mr. William C. Sims, Division of Industrial Development
 Mr. Robert Swisher, Virginia Historic Landmarks Commission
 Mr. Edward F. Wilson, Office of Outer Continental Shelf Activities
 Mr. James R. Wittine, State Corporation Commission

FROM: Mr. Reginald F. Wallace, Environmental Impact Statement
 Coordinator

SUBJECT: Virginia Environmental Impact Reporting Requirements

The Council on the Environment has asked its Staff to prepare a report for consideration by the Council on the exemption of highway and road construction from the State's Impact Reporting Requirements, Virginia Code Sections 10-17.107 through 10-17.112. The highway exemption has been a part of the State's EIS Law since its passage in 1973. It has been suggested, however, that the exemption should be eliminated so as to provide for full environmental assessment of all highway and road construction. In considering this suggestion we intend to evaluate the benefits and the costs that would result from the removal of the exemption. It will therefore be necessary for us to determine the impact such removal would have on EIS reviewing agencies.

We would like to solicit your reaction, from your agency's perspective, of the benefits and costs of removal of the exemption. We are especially interested in changes in the level of effort that goes into the review of proposals and the response to the Council.

EIS Contacts
October 5, 1977
Page two

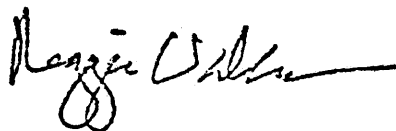
1513

The best information presently available indicates there may be 40-50 projects that would be affected each year.

We are also interested in your comments on what the removal of the exemption might mean if there were legal challenges to highway projects based on the impact reporting requirements. Any additional comments would be appreciated. Although Mr. C. G. Morse or I have already discussed these concerns with several of you, we would appreciate a timely response for our files. The report we are preparing is to be ready for circulation to Council members before our next meeting on November 29. We therefore stress the importance of an early response.

Thank you for your cooperation.

RFW:dja

A handwritten signature in black ink, appearing to read "Reggie Wilson", with a long horizontal line extending to the right.

1514



COMMONWEALTH of VIRGINIA

Commission of Outdoor Recreation

*Eighth Street Office Building
803 East Broad Street
Richmond, Virginia 23219*

October 13, 1977

ROB. R. BLACKMORE
DIRECTOR

TELEPHONE (804) 786-2036

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MARVIN M. SUTHERLAND



MEMORANDUM

TO: Reginald F. Wallace
Environmental Impact Statement Coordinator

FROM: Rob R. Blackmore

SUBJECT: Virginia Environmental Impact Reporting Requirements

I am responding to your October 5, 1977 memorandum concerning the exemption of highway and road construction projects from the State's Impact Reporting Requirements.

I have reservations about requiring the Department of Highways and Transportation to provide for full environmental assessments of all highway and road construction projects. The Department of Highways now provides information to the Commission of Outdoor Recreation and I assume other State agencies, on the location and design of proposed highway construction projects. We review these notices to determine if we have interest in particular projects or if they impact on existing or proposed recreational facilities. For those that we determine we have an interest in, we request additional information and comment to the Department of Highways and Transportation. If the exemption for environmental impact statements is removed, then our office would be required to review and comment on approximately double the number of highway impact statements that we now review. This would create a substantial additional staff requirement on the Commission of Outdoor Recreation and I do not have authorization or funding to employ new personnel for these reviews. This would mean, in effect, that existing personnel would be "spread thinner" in reviewing environmental impact statements. Quite frankly,

Mr. Wallace
Page two
October 13, 1977

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we do not believe it would be in the best interest of the environmental impact review process to require additional reviews without additional staff to properly conduct those reviews.

If legislation is passed to eliminate the exemption for the Department of Highways and Transportation, it should be done only with the understanding that it will require additional funding by the several agencies that now review environmental impact statements.



Director

STATE OF VIRGINIA
JAMES R. KNIGHT, JR., D.D.S., VICE CHAIRMAN
BOX 434, WARREN 22572

E. D. BOWIE
BOX 1078, BRISTOL 22101

EDWARD F. EDGAR
540 SHENANDOAH CT., NORFOLK 23509

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BOX 188, SPRINGFIELD 22150

DOLPH HAYS
1441 N. COURTHOUSE RD., ARLINGTON 22201

ALLAN A. HOFFMAN, M.D.
1040 MAIN ST., DANVILLE 24541

RICHARD E. WATKINS
RT. 5, RICHMOND 23231

RALPH L. WEAVER
BOX 1083, WAYNESBORO 22980

WILLIAM H. WEST
LOCKSLEY FARM, MILLWOOD 22646



COMMONWEALTH of VIRGINIA

COMMISSION OF GAME AND INLAND FISHERIES

Box 11104
Richmond, 23230

CHESTER F. PHELPS, EXECUTIVE DIR
4010 WEST BROAD STREET
BOX 11104
RICHMOND, 23230

October 18, 1977

MEMORANDUM

To: Mr. Reginald F. Wallace, EIS Coordinator,
Council on the Environment

From: James F. McInteer, Jr., Assistant Director *J.F.Mc.*

Subject: Virginia Environmental Impact Reporting Requirements

The Commission of Game and Inland Fisheries has no objection to the continued exemption of highway and road construction from the State's Impact Reporting Requirements. Our agency is in consultation with consultants and representatives of the Department of Highways and Transportation during all phases of highway planning and construction, including preparation and review of Environmental Impact Statements distributed on behalf of the Federal Highway Administration in accordance with Part 771, Title 23, CFR. The cost of our participation in a COE review of highway EIS's would not be great, but the benefits would be even less. I am not able to assess the effect of removal of the reporting requirement on legal challenges to highway projects.

JFMc:pcf





1517

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OND
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COMMONWEALTH of VIRGINIA

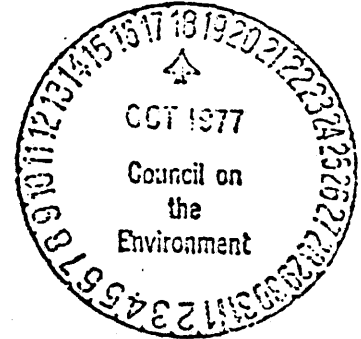
State Air Pollution Control Board

ROOM 1106, NINTH STREET OFFICE BUILDING
RICHMOND, VIRGINIA 23219
TELEPHONE (804) 786 2378

W. R. MEYER
EXECUTIVE DIRECTOR

October 18, 1977

Mr. Reginald F. Wallace
Environmental Impact Statement Coordinator
Council on the Environment
903 Ninth Street Office Building
Richmond, VA 23219



Dear Mr. Wallace:

The impact of having Highway Department projects subject to the State's Impact Reporting Requirements should not work any hardship on the Air Board's EIS review system. We already review a substantial number of VDH&T's projects as a result of the Federal Highway Administration's EIS requirements or our own indirect source permit review requirements.

When you subject a project to the public scrutiny of an EIS review, there is always the chance and opportunity of a challenge and delay. Since many VDH&T projects already undergo this type of review they know where the pitfalls lie and how to correct and avoid the same. The Highway Department has adequately handled all reporting requirements connected with air quality. Legal challenges have occurred in the past over VDH&T projects which we reviewed. The challenge was usually procedural in nature and decided by the court not by the effect on the environment.

Sincerely,

J. C. Ruehrmund
J. C. Ruehrmund

Director, Operations and Procedures

JCR/seb

1518

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COMMONWEALTH of VIRGINIA

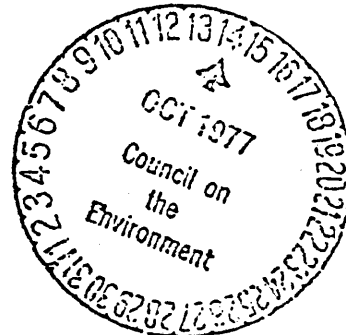
VIRGINIA SOIL AND WATER CONSERVATION COMMISSION

(804) 786-2064

830 EAST MAIN STREET, SUITE 800
 RICHMOND, VIRGINIA 23219

October 13, 1977

Mr. Reginald Wallace,
 Environmental Impact Statement
 Coordinator
 Council on the Environment
 903 Ninth Street Office Building
 Richmond, Virginia 23219



Dear Reggie:

This is in response to your request for comments concerning the possible inclusion of Highway construction projects under the environmental reporting requirements of the State. I believe that in concept, the idea is a good one, however, in reality I question the practicability of including all Highway projects under the review procedure due to staff limitations.

My agency currently reviews EIS's primarily to determine if the proposed projects involve land disturbing activities which would require an erosion and sediment control plan. The Highway Department is already intimately aware of the need for erosion and sediment control on their projects. We are required by Law, to review their erosion and sediment control standards and specifications on an annual basis.

We do not currently review individual Highway construction projects for erosion and sediment control. If we had adequate staff, I believe it might be beneficial for our agency to become more involved in specific Highway projects, including site inspection at the planning stage. However, we would need a number of new staff members to handle the increased workload.

I believe that if we were asked to comment on EIS's for individual Highway construction projects, that our review should include a field inspection of the site in question. Simple review of the EIS without this field inspection would serve no purpose since we already review Highway Department erosion and sediment control standards and specifications annually. As previously mentioned, we do not currently have the staff capability to consider making such field inspections.

I hope that this information is helpful to you. If you have any further questions please let me know.

Sincerely,

Gerard Scelley, Jr.
 Gerard Scelley, Jr.

Erosion & Sediment Control
 Engineer



1519

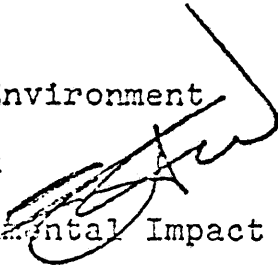
COMMONWEALTH of VIRGINIA

*Office of the Secretary of Commerce and Resources*EDWARD F. WILSON
COORDINATOR, OUTER CONTINENTAL SHELF ACTIVITIES1027 NINTH STREET OFFICE BUILDING
RICHMOND, VIRGINIA 23219
(804) 786-5466

October 7, 1977

M E M O R A N D U M

TO: Council on the Environment

FROM: Edward F. Wilson 

SUBJECT: Virginia Environmental Impact Reporting Requirements

In accordance with your request for comments on the exemption of the highway and road construction from Environmental Impact Reporting Requirements, this requirement would have relatively little impact on outer continental shelf considerations.

As an additional comment based on my experience in reviewing highway environmental impact statements, when I was with the Illinois Environmental Protection Agency, there were a number of cases where the environmental impacts of highway systems, particularly highway systems in urban or urbanized areas, were very substantial. Traditionally the highway engineer has sought the cheapest, most direct, route between points A and B without regard for the social, economic, or ecological consequences. It is important that the effects of major highways construction be considered if a viable environmental management program is to be had.

If there is evidence indicating that activities of the highway people produce relatively little environmental impact, positive or negative, the development of an environmental impact statement should be fairly simple and not too time consuming to review. On the other hand, at the federal level, a substantial set of regulations and the discipline for meeting these regulations has been developed. Some of

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Council on the Environment
October 7, 1977
Page 2

very best impact statements being developed at the present time are highway related.

So it appears that these should be required and reviewed.

I'll be glad to comment further on this matter if I can be of assistance.



WILLIAM C. YOUNG **1521**
CLERK OF THE COMMISSION
BOX 1797
RICHMOND, VIRGINIA 23209

PRESTON C. SHANNON
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STATE CORPORATION COMMISSION

October 11, 1977

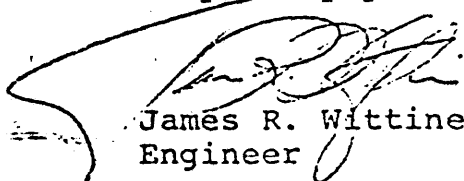
Mr. Reginald F. Wallace
Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219

Dear Mr. Wallace:

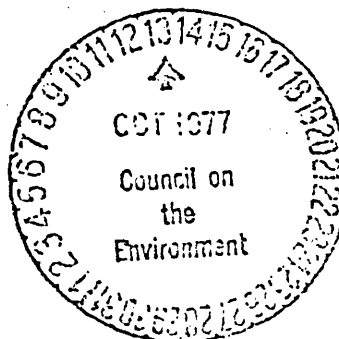
This is in reference to your memorandum of October 5, 1977 concerning the exemption of highway and road construction from the State's Impact Reporting Requirements.

The elimination of the exemption would not impact the Commission since it has no regulatory role relating to the siting, construction or operation of State roads.

Very truly yours,


James R. Wittine
Engineer

JRW:ch





COMMONWEALTH of VIRGINIA

VIRGINIA PORT AUTHORITY

1600 MARITIME TOWER
NORFOLK, VIRGINIA 23510
CABLE ADDRESS VASTPORTS
TELEPHONE 804-622-1671

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M. V. "BILL" CRAFT
Executive Director

October 19, 1977



Mr. Reginald F. Wallace, EIS Coordinator
Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219

Dear Mr. Wallace.

In response to your memorandum of October 5, 1977 concerning removing the EIS exemption enjoyed by the Department of Highways, I would like to offer my comments for consideration.

It is my understanding that most highway and road construction projects are partially funded by the Federal Government. If this be the case, an environmental impact statement is required for these projects by federal law. Therefore, an EIS for state review would be duplication which would accomplish no worthwhile purpose since the same state agencies review the federal EIS.

It is also my understanding that highway projects funded totally by state funds must still undergo a review process by the Department of Highways in which all concerned state agencies are contacted for comments. This happens in the project planning stage of the proposed construction. It is at that time that the Department of Highways can economically change a proposed project without any undue expenditure of funds in order to comply with comments of the affected agencies. Also, the Department of Highways is subject to the permitting process established for both the state and federal levels of government. This process, and those agencies within the process, closely scrutinizes each project and its effects on the environment prior to the issuing of permits. By placing another layer of review of a project on top of the established procedure, time delays result which adds to the costs of the project. These statements should not be required because, for the most part, those agencies which would review an EIS from the Department of

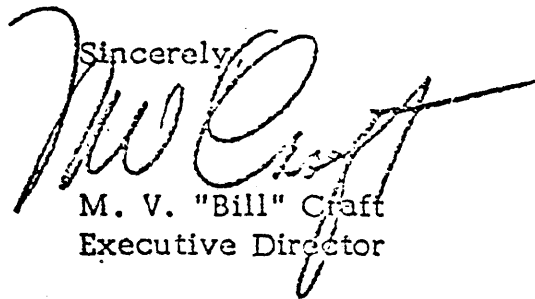
Mr. Reginald F. Wallace
Page 2
October 19, 1977

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Highways have already submitted their views on a project to the Department of Highways when first contacted during the project planning stage. This additional requirement would also have the effect of increasing the work load and required staff not only for the Department of Highways, but also the Council on the Environment and those other state agencies included in the EIS review process.

Since the elimination of the exemption would greatly increase the costs of highway construction projects to the taxpayers of the Commonwealth with no appreciable benefit being derived from the EIS requirement, it is our view that the exemption should remain in effect, not only for the Department of Highways, but ways should be found to expand this exemption to other agencies of the Commonwealth which work under this procedure with no benefit to the environment resulting from the process.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. V. Craft', with a long horizontal flourish extending to the right.

M. V. "Bill" Craft
Executive Director

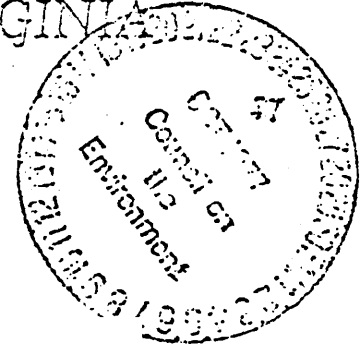
MVC-D/lh



COMMONWEALTH of VIRGINIA

Department of Health
Richmond, Va. 23219

October 21, 1977



JAMES B. KENLEY, M.D.
COMMISSIONER

TO: Susan T. Wilburn, Acting Administrator
Council on the Environment

FROM: O. H. Adams, P. E., Director
Division of Engineering

SUBJECT: Virginia Environmental Impact Reporting Requirements

This letter replies to the memorandum of October 5, 1977 prepared by Mr. Reginald F. Wallace, Environmental Impact Statement Coordinator, on Virginia Environmental Impact Reporting Requirements.

The major impacts of State Highway Department Construction Projects as related to the Health Department Environmental Programs might be on the effects of raw water quality used as a drinking water source, changes concerning shellfish growing waters, waters used for recreation purposes and water quality in streams as related to treated domestic sewage discharges. As the Department of Health is aware of proposed highway construction projects they are screened for possible effects related to the Health Department Environmental Programs and those considered having significant effects would be reviewed according to their need. When an Environmental Impact Statement would, of course, be helpful, in many cases there does not appear to be a need for an Environmental Impact Statement by this department. In addition, the review of Environmental Impact Statements of all Highway Department Construction Projects would cause considerable increase in our workload which is greater now than our work force.

In summary, I wish to advise that as long as the State Highway Department supplies us with information concerning the proposed highway construction projects that in most instances an Environmental Impact Statement would not be necessary.

What the removal of the exemption might mean for highway projects in the legal sense is a matter of conjecture.

Thank you for allowing us to comment on this matter.



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COMMONWEALTH of VIRGINIA

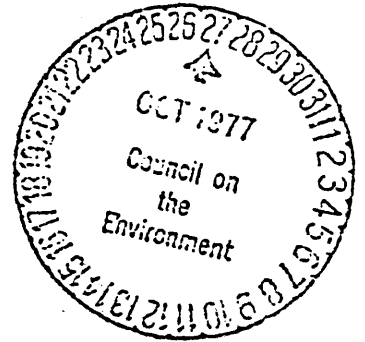
Virginia Institute of Marine Science

Gloucester Point, Virginia 23062

LLIAM J. HARGIS, JR.
DIRECTOR

Phone: (804) 642-2111

October 24, 1977



Mr. Reginald F. Wallace
Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219

Re: Virginia Environmental Impact Reporting Requirements

Dear Mr. Wallace:

In answer to your memo of 5 October 1977 regarding the above referenced subject and the Virginia Department of Highways and Transportation we believe that the scope of projects which would be influenced under the proposed change in policy are adequately covered under the present permit review process. This however assumes that the VDH&T will continue its early coordination with, and responsiveness to, the agencies involved and the ideas and suggestions advanced.

Since VIMS reviews all highway projects which go through the permit process in Tidewater, Virginia already, the EIS requirement would mean very little increase in workload. We would simply review the project earlier in the process rather than during or just prior to permit application review. I hope these comments will help you in preparing your report. If I may answer any questions please let me know.

Sincerely yours,

Thomas A. Barnard, Jr.
Asst. Mar. Sci.

TAB/neh

1526

MARVIN M. SUTHERLAND

Director

JERALD F. MOORE

Deputy Director



COMMONWEALTH of VIRGINIA

DEPARTMENT OF CONSERVATION AND ECONOMIC DEVELOPMENT

1100 STATE OFFICE BUILDING

RICHMOND, VIRGINIA 23219

(804) 786-2121

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VIRGINIA STATE TRAVEL SERVICE

October 25, 1977

MEMORANDUM

TO: Mr. Reginald F. Wallace

FROM: M. M. Sutherland

This is in response to your memorandum of October 5 concerning a consideration by the Council on the Environment to provide for full environmental assessment of all highway and road construction.

It is the opinion of the Department of Conservation and Economic Development that to review these projects would not serve any useful purpose in the review process. These types of "State" projects are already reviewed by affected State and Federal agencies and by those agencies like the Department of Conservation and Economic Development or Corps of Engineers that have special expertise in outdoor-related fields. Therefore, to duplicate or change this efficient system would place additional work loads on agencies plus involve funds not appropriated for such reviews.

Thank you for the opportunity to comment on this consideration. If we may be of future assistance, please let us know.

MMS/BBM/ec

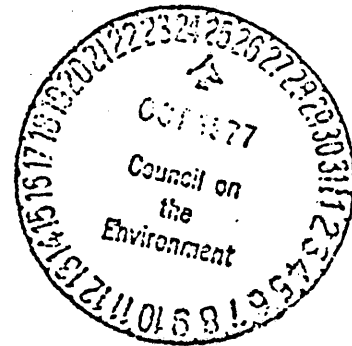


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COMMONWEALTH of VIRGINIA

Division of Industrial Development
State Office Building/ Richmond, Virginia 23219
(804) 786-3791

October 24, 1977



Mr. Reginald F. Wallace
Environmental Impact Statement Coordinator
903 Ninth Street Office Building
Richmond, Virginia 23219

Dear Reggie:

I am replying to your October 5th Memo concerning the exemption of highways and road construction from the State's Impact Reporting Requirements.

We would be most concerned if a "full environmental assessment of all highway and road construction" were made part of the State's EIS law. The fundamental question is what can be gained by adding this requirement? We think nothing but additional paperwork and delay. Certainly the large construction projects are already covered by the federal EIS process. Also, existing procedures make review by various state agencies mandatory, and allow for substantial opportunity to comment by other state agencies as well as the general public. Thus, we can see no virtue in this proposal.

A second point concerns the time involved in making comments. It is our understanding that the Highway Department has between 200 to 300 projects a year. Whether the proposal would apply to "all" projects as is indicated on the first page of the memorandum or to the "40-50 projects" as indicated on the second page, we believe that a considerable amount of our time would be required. Given our comments in the above paragraph, we would have to think that the proposal would place an unnecessary burden on us.

Thank you for this opportunity to express our views and if you have any questions, please give me a call.

Sincerely,

Mark R. Kilduff
Assistant Director of Research

MRK:mmh

cc: William C. Sims



COMMONWEALTH of VIRGINIA

S. MASON CARBAUGH
COMMISSIONER

PLANNING AND DEVELOPMENT
DEPARTMENT OF AGRICULTURE AND COMMERCE
P. O. Box 1162, RICHMOND, VIRGINIA 23209

BERKWOOD M. FARMER, Ph.D.
DIRECTOR AND
CHIEF ECONOMIST

October 20, 1977



Mr. Reggie Wallace
Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219

Dear Reggie:

I appreciate your memorandum dated October 5 regarding consideration by the Council on the exemptions of highway and road construction in Virginia from the EIS review process.

Attached is a copy of a paper entitled "A Perspective on Land Use Planning" that we prepared for Secretary Shiflet's Land Use Council. I call your attention to page 12, where we recommend land resource impact statements on various projects to include the construction of highways. This paper was considered by the Land Use Council on October 14. I recommend that you contact Don Budlong regarding policy recommendations on this issue that will go from Secretary Shiflet to Governor Godwin.

I commend the Council for looking into benefits and costs that will result from the approval of this exemption. I believe a principal factor in the analysis should relate to benefits and costs associated with the highway construction in relation to land resources in Virginia. In the past, highway construction has used a considerable amount of farmland.

Locations of highway and utility rights-of-way are prime factors affecting growth and development throughout the Commonwealth. Studies indicate that rights-of-way for new and enlarged highways and utilities have required more land than is required for commercial and industrial development in Virginia. This estimate is for the past few years.

Costs to various review agencies should be viewed in terms of what would have to be given up by the agency in order to spend appropriate time in the review process. At this time, I cannot



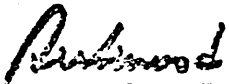
Mr. Reggie Wallace
October 20, 1977
Page 2

effectively evaluate resources from the standpoint of our agency,
but we will shift our resources to get the job done.

I do not see at this time why we will have more legal
problems than we currently have in other areas such as industrial
development, utility rights-of-way, parks and recreation.

If this Department can provide any information or
assistance to your analysis process, please let me know.

Sincerely,


Berkwood M. Farmer

BMF:jp

Encl:



JAMES E. DOUGLAS, JR.
COMMISSIONER

ELIZABETH M. CORSON
ADMINISTRATIVE OFFICER

S. M. ROGERS
ENVIRONMENTAL OFFICER AND
ACTING CHIEF ENGINEER

ROBERT V. HANCOCK
CHIEF LAW ENFORCEMENT
DIVISION

HOWARD S. HUDNALL
CONSERVATION AND
REPLETION OFFICER

COMMONWEALTH of VIRGINIA

Marine Resources Commission

P. O. Box 756

2401 West Avenue

Newport News, Virginia 23607

Telephone: 245-2811

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IVAN D. I
VIRGINIA BEACH, VIR

October 21, 1977

Mr. Reginald F. Wallace
Environmental Impact Statement Coordinator
Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219



Dear Reggie:

Mr. Larsen is attending a conference out of state and asked me to answer your requests concerning the Highway Department's exemption of the Virginia Environmental Impact Reporting Requirements.

Other than causing more time and expense to the Highway Department, I do not see a need for them to prepare impact statements on every highway project (it will probably be more than a hundred a year). The Highway Department is required by Code 62.1-3 to acquire a permit from us for all projects in, on, or over the bottom-lands of the Commonwealth.

Our normal review procedures involve the following: assessing the proposal from both an environmental as well as socio-economic view point; receiving comments from VIMS on possible effects to the marine environment; receiving comments from the SWCB on possible effects to water quality; and additionally, on large projects, we review the Draft EIS's the Highway Department is required to prepare when federal funds are involved. From all of this information and after many meetings (on large projects) with the Highway Department representatives, we make a recommendation to the Commission. The Commission weighs the evidence and testimony of all the aforementioned reviewers and approves or denies the proposal (usually the Highway Department applies for a permit to place the structure then applies for a permit to perform the actual construction thus VMRC in some cases reviews the proposal twice).

I feel the benefits will not even approach the costs to the Highway Department of requiring an EIS on all projects. Of course, the costs to us will be minimal unless we will be required to provide any and all with copies of the EIS's along with the copies of the drawings and (in some cases) of the application.

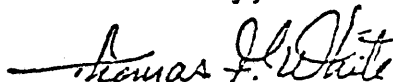
Reginald F. Wallace
Page Two
October 21, 1977

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You make a good point concerning legal challenges to highway projects based on impact statements; however, we feel that process will probably be completed by the time the proposal is submitted for review by this Commission. As you are aware from our statements on past reviews, if the permit requires a permit from us we will withhold comments until our review procedure begins.

In summary, an EIS for large highway projects that impact the marine resources are beneficial to our review process while the remainder of marine related projects, in my opinion, are adequately reviewed without the benefit of an EIS.

Sincerely,



Thomas F. White
Environmental Engineer

TFW:eeb
EV

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COMMONWEALTH of VIRGINIA
Virginia Historic Landmarks Commission

JUNIUS H. FISHE
EXECUTIVE I
221 GOVERNOR
RICHMOND, VIRGINIA
TELEPHONE

October 24, 1977

M-E-M-O-R-A-N-D-U-M



TO: Mr. Reginald F. Wallace, Environmental Impact Statement Coordinator
Council on the Environment

FROM: Mr. Tucker Hill, Executive Director, Virginia Historic Landmarks
Commission, (including Virginia Research Center for Archaeology)

RE: Virginia Environmental Impact Reporting Requirements

This memorandum is in response to your request of October 5, 1977, to Dr. William M. Kelso and Mr. Robert E. Swisher, staff members of the Historic Landmarks Commission.

For some years the Commission has participated in a project review process with the Department of Highways and Transportation through its Environmental Quality Division. This relationship was established by the two agencies when it became evident that cultural resources were being identified too late in the planning of highway projects to be considered in the location studies and therefore some significant landmarks were being needlessly lost. By and large, the communication between the two agencies has been useful; the Historic Landmarks Commission staff has the opportunity to comment on projects that involve both non-federal and federal funds and to have its opinion taken into account in the decision making process.

This office strongly supports the work of the Council on the Environment, but I must respond that the inclusion of highway projects in the State's Impact Reporting Requirements would not change our present level of review.

TH/bf

APPENDIX D

VIRGINIA'S ACTION PLAN FOR FEDERALLY FUNDED
HIGHWAY IMPROVEMENT PROJECTSINVOLVEMENT OF THE PUBLIC AND OTHER AGENCIESCITIZEN PARTICIPATION:

General -- Citizen participation in the development of Virginia's highway programs is not only a legislative requirement, but also a tradition which dates back to the first annual public allocation hearings held by the Commission shortly after it was established in 1922. In 1932, when the Commission was given the responsibility for administering and maintaining nearly 36,000 miles of secondary roads formerly under the control of 97 counties, citizen participation at the local level was assured by the requirement that a representative of the Highway Commission meet annually in a public meeting "...with the Board of Supervisors or other governing body and citizens present...." to discuss plans and proposals for the maintenance and improvements of secondary roads in the county. To provide this local service, the Department has forty-five residency offices and eight district offices located throughout the State (Appendix B). These local offices provide the citizen with a ready means of access to the Resident Engineer, who is responsible for implementation of the highway program in from one to four counties. The Resident Engineer living in the community becomes well acquainted with community values and needs and plays a most important role in the development and implementation of the transportation program in his community.

A full commitment to citizen participation in the development of Virginia's highway and transit programs continues to be the Department's policy, and the processes which encourage active citizen participation have been expanded throughout the years as citizens' needs have become more diverse. The objectives of the Department (Department Policy Memorandum 1-2) formally recognized the need to give consideration to views of the public, to be responsive to the desires of the citizens of the Commonwealth, and to provide the citizens with timely and complete information regarding the Department's plans and actions. However, perhaps more important than compliance with law and formal statements of policy is the unwritten "open door policy" which is maintained by the Commission and Department officials. This open door policy provides all citizens with free and easy access to the Members of the Commission and Department officials. It is the keystone of the process which encourages active citizen participation in the development of highway and transit programs from the very earliest stage through the final stage of approval by the citizens' elected representatives.

Commission and Department Processes -- There are four major processes which provide the citizen with an opportunity to participate in the program and project development decision-making processes:

Preallocation District Hearings -- Annually the Department conducts public hearings in each of its eight construction districts. The purpose of the meeting is to obtain citizen input for an evaluation of existing programs and the development of new programs.

The meetings are held prior to the formulation of recommendations to the Highway and Transportation Commission for allocation of funds to finance projects selected from the Interstate, Primary, and Urban long-range programs. Although the meetings are directed towards securing citizen viewpoints on the adequacy and direction of the Interstate, Primary, and Urban programs, this input is taken into consideration in the development of the total transportation program.

Normally, the public hearings are attended by the Highway and Transportation Commissioner, the member of the Commission from the District, the Deputy Commissioner and Chief Engineer, the Director of Planning, the Programming and Scheduling Engineer, and other Department planning personnel.

Citizen attendance and participation is actively encouraged. The meeting is widely publicized through spot radio and television announcements, news releases, and legal notices. Invitations to attend are sent to each member of the Legislature by the Commissioner. Local governing bodies, District Planning Commissions, and local citizens groups are invited to attend by the District Engineer.

The meetings are conducted in a manner which is intended to obtain maximum input from the citizens and their representatives. The meetings are opened with a brief explanation of the goals and objectives of the current programs and a status report of the implementation of the program. The citizens and their representatives are invited to express their viewpoints on the adequacy of existing programs. All of the hearing comments are recorded and are considered by the Department in developing or revising programs which are submitted to the Commission for their review and approval.

The responsibility for this citizen participation process is assigned to the Director of Program Management. Operating responsibility for meeting arrangements, reporting on current programs, and consideration of citizens' request in program development is assigned to the Programming and Scheduling Engineer.

Tentative Allocation Hearings -- Annually the Commission conducts public Tentative Allocation Hearings at two locations in the State, one usually at Roanoke, and the other in the eastern part of the State, usually at Richmond. The purpose of the meetings is to provide the Highway and Transportation Commission additional citizen input for an evaluation of existing programs and the development of new programs. The meetings are held prior to the Commission allocating funds to finance specific projects selected from the Interstate, Primary, and Urban long-range programs. Although the hearings, like the Preallocation District Hearings, are directed towards securing citizen viewpoints on adequacy and direction of the Interstate, Primary, and Urban programs, this input is taken into consideration in the development of the total highway program.

Normally, the public hearings are attended by the entire Highway and Transportation **1535** Commission, the Deputy Commissioner and Chief Engineer, the Director of Administration, the Director of Program Management, the Director of Planning, the Programming and Scheduling Engineer, the Transportation Planning Engineer, and other Department planning personnel.

Citizen attendance and participation is actively encouraged. The meeting is publicized in a similar manner as that previously described for the Preallocation District Hearings.

At the time of the Tentative Allocation Hearings, the initial evaluation of the adequacy of existing and planned systems by the Department's planning staff has been completed. As a result of the evaluation, the Department engineers have made recommendations to the Commission for the allocation of funds for projects. The Commission has considered these recommendations in terms of alternate courses of action and the best overall public interest, directed that the recommendations be adopted or revised accordingly, and subsequently has approved the allocations as tentative subject to the input which will be received at the Tentative Allocation Hearings.

At the meetings, a listing of the specific amounts tentatively allocated to various projects is presented. A brief presentation is made explaining the relationship of the proposed allocations to the goals and objectives of the current programs. The citizens and their representatives are then invited to express their viewpoints on the appropriateness of the tentative allocations. The Commission considers the viewpoints expressed at the meetings and then approves or revises, in whole or part, the allocations. This action provides funding authorization for project development. However, just as importantly, the Commission and the Department use this citizen input to determine to what extent both the short- and long-range programs should be modified or new programs developed.

The responsibility and authority for considering citizen participation at this point in the development process, and the resulting decision, rests solely with the State Highway and Transportation Commission. Operating responsibility for meeting arrangements is assigned to the Director of Administration; operating responsibility for preparation of tentative allocations, a report on current programs, and future consideration of citizens' request in program development is assigned to the Programming and Scheduling Engineer.

Project Hearings -- Citizens have numerous opportunities to express their viewpoints during the course of project development. As previously described, the citizen may express his views on a specific project at the Preallocation District Hearings and at the Tentative Allocations Hearings before project implementation is initiated. These views affect the Department's decision whether or not to proceed with a project and, if the decision is to proceed, are considered in the initial determination of the significance of the project.

For projects with apparent major impact or of major public interest, the Department solicits citizens' views through appropriate means such as informal informational meetings and household and business surveys. The views obtained are considered and influence the course of the preliminary studies.

After sufficient data has been accumulated and considered and development has progressed to a point that alternatives may be presented to the public, a public hearing is held, or an offer is made to hold a public hearing. Depending upon the Department's determination of the significance of the project, the level of action taken by the Department to provide information to the public at this point may range from comprehensive displays of the alternative proposals in local shopping centers and similar efforts prior to the public hearing to simple public notice with plans available for review and discussion at the local Resident Engineer's office.

If a public hearing is held, the meeting similarly may range from a large gathering in a public auditorium to a few persons in a county courthouse; or, if no hearing is needed, public participation may simply be a single citizen reviewing the plans with the Resident Engineer. Regardless of the magnitude or the simplicity of the public input, all the views expressed are considered by the Department and, in the case of projects of major impact, by the Highway and Transportation Commission before a decision is reached whether or not to proceed with the project. In many instances, the citizen has a similar opportunity at two points in the process, once when corridor alternatives are being considered and subsequently when final design features are being considered.

At the project development stage, the Department's public hearing procedures are in accordance with FHPM 7-7-5 (See Appendix E) with the following exceptions:

1. Major Actions

Approval by FHWA of the Final EIS or Final Negative Declaration Statement under the provisions of FHPM 7-7-2 will constitute location or combined location and design approval. Thus, Section 10 of FHPM 7-7-5 is revised as indicated in Appendix E-1 for these projects.

2. Non-Major Actions

- a. Public Hearing Not Required: Approval of the PS&E package will constitute both location and design approval.
- b. Public Hearing Required: The provisions of FHPM 7-7-5 apply as written to these projects.

3. The Certification Acceptance Plan applies to applicable projects.

Local Government Processes -- In addition to the citizen participation processes provided by the Highway and Transportation Commission and the Department, local governing bodies also provide the citizen numerous opportunities to participate in the development of transportation programs. These processes include:

County Boards of Supervisors' Annual Road Hearings and Recommendations --

The boards of supervisors of the counties having roads in the State Secondary System are required by law to hold annual public meetings for the purpose of discussing with a representative of the Department, designated by the State Highway and Transportation Commission, the plans and proposals for the maintenance and improvement of the Secondary roads in the county.

The meetings are conducted in a variety of ways depending upon the desires of the board. In every instance, however, the meetings do provide an opportunity for the citizen to hear, from the Department's Resident Engineer, the plans for improving the Secondary System within the county, and to express, both to the board of supervisors and to the Resident Engineer, his viewpoint on the adequacy of the plans.

The law also requires the board after such meetings to make written recommendations to the Department of Highways and Transportation as to the expenditures of funds for road work, and the Department is required to follow such recommendations insofar as they are compatible with the Department's general plans and available funds. The Department is required to notify the board if the recommendations cannot be carried out.

All of the comments made by the citizens at the public hearing and the board's written recommendations are considered by the Department in developing or revising programs for the Secondary roads in the county. Responsibility for the consideration of citizens' request and the board's recommendations in the development of programs for the county is assigned to the Resident Engineer. Responsibility for consideration of citizens' request and the board's recommendations in program development on a statewide basis is assigned to the Secondary Roads Engineer.

City and Town Council Budget Hearings -- The requirements and the procedures for holding public hearings on city or town budgets vary, but normally the citizen is afforded an opportunity to express his views on any highway program or project which requires the expenditure of municipal funds.

Without the council's resolution of approval committing municipal funds, the Department will not proceed with a project which is to be financed in part by the municipality.

For projects not requiring financial participation by the municipality, the normal procedures are for the Department to request a resolution expressing the council's endorsement of the project. The council considers this request in an open meeting, and the citizen again has opportunity to make his views known.

Some local governments have very comprehensive procedures for processing highway projects in conjunction with procedures of the Virginia Department of Highways and Transportation which add appreciably to public involvement at the local level. Such procedures are encouraged by the Department. Highway Project Processing Procedures used by the City of Norfolk are included in this document as an example. (See Appendix F.)

Urban Transportation Planning Process ("3-C" Process) -- The Urban Transportation Process (Flow Chart No. 3) provides numerous opportunities for citizen input through public hearings and through surveys of citizens' needs. Furthermore, the service of local citizens on the "3-C" Technical Committee, "3-C" Policy Committee, Planning District Commission, Local Planning Commission and, of course, the local governing bodies also furnishes important citizen input to the development of urban transportation systems. See Appendix D for documentation of the citizen participation strategies endorsed by the "3-C" Policy Committees.