

LITTLE HOOVER COMMISSION



CAL-EPA:
AN UMBRELLA
for the
ENVIRONMENT

June 1991

LITTLE HOOVER COMMISSION

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June 7, 1991

The Honorable Pete Wilson
Governor of California

The Honorable David Roberti
President pro Tempore of the Senate
and Members of the Senate

The Honorable Willie L. Brown, Jr.
Speaker of the Assembly
and Members of the Assembly

The Honorable Kenneth L. Maddy
Senate Minority Floor Leader

The Honorable Ross Johnson
Assembly Minority Floor Leader

Dear Governor and Members of the Legislature:

During the past 52 days, the Little Hoover Commission has planned and conducted a two-day hearing involving more than 30 witnesses, reviewed pertinent literature, interviewed experts and elicited a broad range of public input to aid in its examination of Governor's Reorganization Plan Number One, 1991: Creating the California Environmental Protection Agency (Cal-EPA). As a result of this expedited-but-intensive analysis, the Commission recommends:

- * Implementation of the Cal-EPA reorganization plan as a first step toward better coordination of environmental policies.
- * Modifications of the plan, both concurrent with its adoption and in the future, to make the consolidation of environmental programs more effective and more efficient.

The Commission's findings and recommendations relating to the reorganization plan are in keeping with a long-held Commission philosophy: State programs work best when they are closely coordinated with other programs of similar functions or goals and when there is a centralized point of authority, responsibility and accountability.

The Cal-EPA plan embraces this concept by taking the first step toward consolidating a variety of environmental programs under a distinct agency headed by a Cabinet-level Secretary. In the Commission's judgment, the plan is a good framework from which to begin building a cohesive approach to California's environmental protection needs.

In this letter report, which begins with a background section on the reorganization process, the Commission sets forth its reasoning for supporting the Cal-EPA plan, as well as makes recommendations to further the goals enunciated by the Administration in its reorganization proposal. Because the plan has already been submitted to the Legislature and may not be altered, many of these recommendations are in the form of proposed concurrent legislation, while others are suggestions for the future. The report concludes with a pledge by the Commission to re-examine Cal-EPA one year after its creation to assess its achievements and any unfulfilled goals.

Background

Under California statutes, the Governor may propose the reorganization of state agencies. This process cannot be used to create new functions that are not already authorized by the Legislature. Instead, the reorganization process is used to consolidate, transfer, coordinate or abolish agencies. According to statutes, a reorganization should accomplish one or more of the following goals: to promote better execution of laws; to reduce expenditures and increase efficiency; to group agencies by major functions; to reduce the number of agencies; or to eliminate overlapping and duplication of effort.

Under the reorganization process, proposals undergo two levels of review. The first level is by the Little Hoover Commission, which is charged with evaluating the plan for its effectiveness and efficiency. The Commission receives the Governor's proposal at least 30 days before it is submitted to the Legislature. Once the plan is submitted to the Legislature, the Commission has an additional 30 days to report its recommendations to the Governor and the Legislature.

The second, and final, level of review is by the Legislature. When the Legislature receives a reorganization plan, either house has 60 days to veto it. The plan is referred to an appropriate standing committee in each house, each of which reports to the respective floors at least 10 days prior to the end of the 60-day period. The only legislative action allowed by law is for either house to adopt a resolution declaring that it "does not favor" the plan. The plan may not be modified, amended or approved--only vetoed. If no action is taken by either house, the plan automatically takes effect on the sixty-first day. Statutory language to implement the plan is usually adopted in a following legislative session, but is not necessary to make the reorganization valid.

Since the reorganization statutes were enacted in 1967, 14 proposals have been rejected by the Legislature and eight have been allowed to take effect, the most recent in 1984. Generally, plans that are controversial or complex have found disfavor in the Legislature, with legislators preferring reorganization to occur through legislation that they may shape to their own liking through amendments.

In recognition of this past history, the Administration has stated that the Cal-EPA plan was specifically designed to contain only the bare minimum of changes needed to get the agency started. Coining the term "rolling reorganization," the Administration has indicated other agencies and functions may be added later once details are worked out legislatively.

Several concerns have been raised about the Cal-EPA plan. These include:

- * The structure for assessing and managing risks.

- * The placement of pesticide regulation in the new agency.
- * The potential for "one-stop shopping" for those who are being regulated.
- * The inclusion of other programs in Cal-EPA.
- * The costs and benefits of the reorganization.
- * The potential for interdiction of pollution before it occurs.

The Commission addresses these concerns, as well as the overall plan, in the following findings and recommendations.

Findings and Recommendations

FINDING #1: The formation of a Cal-EPA has the potential to strengthen the environmental policy-setting process and streamline regulatory and enforcement activities.

Under the Cal-EPA plan, several dispersed state programs that are designed to protect the environment will be brought together under one agency umbrella headed by a Cabinet-level Secretary. Although nothing in the plan per se invests the Secretary with extraordinary powers, consolidated leadership of the programs should lead to better coordination of activities and the ability to set priorities among the state's many environmental needs. This, in turn, should strengthen the environmental policy-setting process, eliminate duplicative functions and provide a cohesive, effective approach to implementing policies.

The reorganization creates the California Environmental Protection Agency and places within it the following:

- * The Cabinet-level Office of the Secretary for Environmental Protection.
- * The Air Resources Board.
- * The Integrated Waste Management Board.
- * The Water Resources Control Board (including the Regional Water Quality Control Boards).
- * The Department of Toxic Substances Control (functions transferred intact from the Department of Health Services).
- * The Department of Pesticide Regulation (functions transferred intact from the Department of Food and Agriculture).

- * The Office of Environmental Health Hazard Assessment (functions transferred from the Department of Health Services).

The plan outlines six main and four subsidiary objectives for Cal-EPA, which will be discussed in detail later in this finding. In general, these objectives focus on better coordination and prioritization of the State's efforts to protect the environment, with an emphasis on regulatory enforcement that is clear, understandable and uniform.

In order to evaluate the potential of the Cal-EPA plan, it is necessary to understand the present structure for the various environmental programs that would be included in the new agency. The plan draws together elements from three distinct state entities, two of which do not have environmental protection as a major mission. The Department of Food and Agriculture, which now regulates the use of pesticides, has as its main mission promoting the agricultural industry and ensuring that California remains a productive bread-basket for the nation and world. The Department of Health Services, which focuses on public health safety rather than environmental protection (although the two frequently may be closely linked), now houses the Toxic Substances Control program and the Health Hazard Assessment Division.

The three boards that deal with air, water and land pollution are under the budgetary oversight of the Resources Agency, but function loosely under the Cabinet-level Environmental Affairs Secretary. This post was created in 1975 as a half-step toward many of the same goals now pursued in the Cal-EPA plan. The Environmental Affairs Secretary also served as the chair of the Air Resources Board and was to provide coordination of policies and activities among the three boards.

As the Commission was told during its hearing by the chair of the Air Resources Board, who held this dual post for the past five years, this plan has been largely ineffective. As one person filling two full-time jobs and with no staff dedicated solely to oversight activities, the Secretary could not provide effective overall leadership. In addition, there was the lingering perception that the Secretary could be biased in favor of the Air Resources Board, rather than treating the concerns of the Water Resources Control Board and the Integrated Waste Management Board evenhandedly. Since each of the boards is independent--reaching decisions that are neither reviewed nor subject to modification by any higher authority in the Executive Branch--the Secretary had no real power to forge consensus.

The scattered nature of these various programs reflects the historical pattern of their legislative creation. Both nationally and locally, environmental programs have tended to be created in response to specific perceived problems. Thus, programs have grown up separately to protect the air, the water and the land.

This can lead to less effective environmental policies. At various times resources may be earmarked for one type of pollution rather than another that may be a greater health risk or that may be more responsive to clean-up efforts. In addition, decisions that are made that take into consideration only one "media" (air, water or land) may adversely affect other media. For instance, to avoid water pollution, someone may be ordered to burn a pollutant (dispersing it into the air) or to allow it to settle into land before wastewater is discharged. The environmental damage of discharging the pollutant into the air or land may be greater than allowing it to remain in the water; however, a balancing of the various media concerns is outside the purview of the entity busy protecting the purity of water.

It is outside the scope of this letter report for the Commission to investigate and identify examples of how the dispersal of environmental programs has adversely affected the ability of the State to protect the environment. But there appears to be general consensus by all parties, including those being regulated, that the hodge-podge of programs and authorities has been spotty in its effectiveness. Bringing the programs under one umbrella and providing centralized authority, responsibility and accountability holds out the promise of greater effectiveness and efficiency.

But will Cal-EPA, as planned, achieve the coordination and cohesiveness desired? This question arises because of an inherent drawback in the reorganization process: No added functions or authorities beyond those already authorized by the Legislature may be granted through reorganization. Thus, powers already vested in other officials may be transferred to the new Secretary, but he may not be given in the reorganization process the ability to override decisions by the independent boards or to exercise flexibility by moving budgeted funds from one program to another. In fact, the Cal-EPA plan repeatedly emphasizes that programs are being brought in intact and that the boards will retain their independence. This strategy reflects the Administration's desire to keep the plan as simple as possible for easier legislative acceptance and to disrupt as little as possible the operations of the various programs.

Within the limitations of the reorganization process, then, how much can be achieved by Cal-EPA? An examination of the six main and four subsidiary objectives outlined by the Governor in the Cal-EPA plan is helpful in assessing this.

1. Focusing the State's resources and energy on pollution that presents the greatest risk to public health and the environment.

Under Cal-EPA, the Secretary should be able to assemble multi-disciplinary teams to assess and rank environmental problems. In addition, the Secretary should be capable of focusing attention on problems that he identifies as having the greatest impact or the greatest potential for clean-up. But the allocation of resources will continue to remain program-specific as directed by the Legislature in the budgeting process unless flexibility to divert budgeted funds is given to the Secretary at some later point.

2. Using the most rigorous and internally consistent science available to set priorities.

The Secretary should be able to set standards and establish guidelines for the manner in which environmental risk assessments are made within Cal-EPA.

3. Stopping pollution before it occurs.

Nothing in the Cal-EPA plan itself is targeted at preventing pollution at the source. However, in the proposed budget (which will be discussed later in the report), a position is dedicated to public outreach and assistance for those being regulated.

4. Encouraging the use of environmentally safe alternatives that are economically viable through research, free-market incentives and information sharing.

The same comments for Number 3 are applicable here.

5. Creating a vigorous, predictable enforcement ethic that will provide uniform treatment for those being regulated and effective measures that will result in real-world improvements in the environment.

The Secretary will have the ability to form a working group that includes representation from the three media being protected. This group may more closely coordinate procedures of the boards. But nothing in the Cal-EPA plan gives the Secretary authority to impose uniform procedures or to redirect enforcement efforts as they pertain to each of the three independent boards.

6. Opening the regulatory decision-making process to the public as a whole.

Nothing in the Cal-EPA plan provides for more public input into the decision-making process; however, the proposed budget does include funds for a Public Adviser that would serve to acquaint the public with the regulatory process and to reflect public concerns within the agency. The plan does make note of the importance of keeping communications open between the new entity and the Department of Food and Agriculture and the Department of Health Services through interagency agreements and memoranda of understanding.

In addition, the plan specifies four other improvements that will be gained by creating a Cal-EPA:

1. The creation of a primary point of accountability for state environmental programs.
2. The assurance that there is a Cabinet-level voice for environmental protection to advise the Governor.
3. The provision of more rapid deployment of coordinated government action to meet environmental needs.
4. The reduction of overlapping and redundant bureaucracies.

Each of these subsidiary goals are achievable by the Secretary under the Cal-EPA plan as proposed since the head of any agency provides a single point of accountability, ensures access to the Governor, provides direction for programs under him and directs programs in such a way as to eliminate duplication.

In summary, some of the objectives enunciated by the Administration can be achieved through the mere creation of a Cal-EPA, while others will require legislative changes in the future.

Recommendation #1: The Cal-EPA reorganization plan should be implemented as a first step toward better coordination of California's environmental policies.

The Little Hoover Commission believes strong leadership for the State's environmental programs will better protect the environment through more efficient and effective policies. While the Cal-EPA plan does not provide all the tools necessary for such strong leadership, it is a good beginning and establishes a needed framework for coordination and cohesiveness that otherwise

will remain elusive. Therefore, the Commission recommends implementation of the plan, while recognizing that additional steps need to be taken if Cal-EPA is to live up to its potential.

FINDING #2: Uniform guidelines for and centralized control over risk assessment activities is critical to ensuring the integrity of environmental policies and retaining public confidence.

The manner in which risk assessment is conducted and the degree to which it is used in an unfiltered, pure form is an important key to forming sound environmental policies and to retaining public confidence in protection activities. Risk assessment functions are now scattered in more than one agency, each with its own standards that may lead to conflicting conclusions. There is the perception that some assessments may be suppressed, altered or exaggerated to fit the desires of those forming risk management policies. Combining environmental risk assessment activities in one agency with the proper safeguards has the potential for resolving these problems.

Risk assessment is the science of determining the toxic effects of substances. Risk management is the process of making regulatory decisions about substances by considering risk assessment data, costs, benefits and other issues. Theoretically, risk assessment should be a purely scientific finding, undiluted by consideration of politics, economics or other factors.

Systems that place risk assessors under the budgetary and oversight control of risk managers lead to questions about the ability of the assessors to allow "pure" science to be their only guiding force. If science leads them to one conclusion, but their manager is demanding a different assessment, what is the outcome? Some fear it is science that is less than pure.

Unfortunately, "pure" science is an abstraction rarely reached in reality. Scientific knowledge constantly changes; what may be the best available techniques today are outdated tomorrow. The inclusion of certain factors to be weighed, evaluated and quantified and the exclusion of others may have a huge impact on the outcome of an assessment; yet choices to include or exclude each factor may be entirely scientifically defensible. Finally, the rigor with which procedures are followed may vary from assessor to assessor, leaving results open to question and interpretation.

The State's present system of risk assessment demonstrates the impact of these problems. Risk assessment for pesticide use is now housed within the Department of Food and Agriculture's pesticide regulatory program. Critics of the program have argued that assessments are tampered with by those who make risk management decisions. A 1990 Senate Office of Research report set forth complaints of this type by those engaged in risk assessment at the Department, but its findings were disputed by the Department.

In addition, public faith in the validity of assessments is a factor to consider. In 1989, there seemed to be some reluctance on the part of the public to accept a risk assessment clearing the use of malathion spray to fight Medflies and save agricultural crops because the assessment came from the same Department charged with promoting agricultural products. Nonetheless, proponents of the present pesticide program with the Department of Food and Agriculture have argued the State has the toughest pesticide regulations in the nation.

Many of the State's other risk assessment functions currently are within the Department of Health Services, both regarding public health and environmental health. These activities take place, therefore, in the same Department that houses the State's scientific laboratories. Proponents of this system point to the potential for symbiotic work and the exchange of valuable information that can occur when people work closely together. Critics, including some of the scientists themselves, argue that risk assessors are dispersed geographically, so there is little unofficial interaction, and that risk assessment in general is a very small cog in a very large Department that is overlooked when it comes to budgeting, staffing and regard. In addition, there is no official mechanism for coping with divergent risk assessments of the same substance when one unit arrives at one conclusion and a different unit reaches another outcome.

Clearly, a structure that resolved these issues would improve the State's risk assessment process. The answer to these problems seems, at first blush, fairly straightforward: Separate risk assessment from risk management. Adopt standard guidelines.

The latter should be easily achievable under the Cal-EPA plan. With the aid of the Science Adviser that is envisioned in the budget, the Secretary should be able to establish standards and guidelines for assessment processes and then act as a centralized control point to ensure that they are followed.

The question of separation of risk assessment from risk management is not as easily addressed. Several witnesses at the Commission's hearings, including William Ruckelshaus, an eminent figure in the field of environmental protection and the first Administrator of the federal Environmental Protection Agency, made it clear that physical separation of risk assessment from risk management has drawbacks. Unless both activities come under the same director, there is no assurance that assessments will be done in a timely manner or that priorities for assessments will match priorities for regulatory decisions. The federal example of the Occupational Safety and Health Administration (OSHA) and its companion risk-assessment entity, the National Institute for Occupational Safety and Health (NIOSH) was cited as not working well because of lack of coordination and timeliness.

In addition, witnesses said the best risk management decisions come through continuing interaction with risk assessors once the original assessment has been made. Risk managers need input as to the mitigating effect of alternative methods of dealing with risk, and they may need clarification about assumptions made in assessing the risk originally.

The cumulative opinion of the experts testifying on this point is that internal separation of risk assessment and risk management under unified leadership is desirable. But the key to assuring integrity of the process is to ensure that uniform standards and procedures are followed for all risk assessments, and that public and peer review are provided to guarantee open scrutiny of processes and results.

The Cal-EPA plan moves in this direction, but falls short in some ways. The plan creates the Office of Environmental Health Hazard Assessment (OEHHA) as a separate entity, on par with the various departments and boards in the new agency. The plan describes the office's role in the following manner:

The function of OEHHA will be to evaluate the health risks of chemicals in the environment. To this end, OEHHA will provide information to environmental

regulators and the public about the health effects that result from environmental exposures to noninfectious agents. Emphasis will be placed on the synergistic and cumulative effects of total exposure from all pollution sources.

OEHHA will identify, quantify, and recommend health-based standards for chemicals in the environment, and provide technical and scientific support, consultation and training to state regulators, local government agencies and the public. OEHHA will also develop scientific policies and guidelines for risk assessment procedures for the Secretary. Finally, OEHHA will provide oversight of regulatory activities and guidance on scientific aspects of environmental protection.

The plan further explains its goals:

The functional and conceptual separation of risk assessment and risk management will be bolstered by the establishment of the OEHHA as a free-standing office, separated organizationally from the other regulatory units. At the same time, the risk assessment function will be housed within Cal-EPA, thereby enabling the Agency to set timing and resource priorities as necessary to achieve its environmental protection mission.

The Administration's plan also includes acknowledgement of the need for written risk assessments that are publicly available, peer review reports on risk assessments that also are open to the public, and adherence to uniform standards for risk assessment procedures.

But for all the rhetoric confirming the importance of separating risk assessment from risk management, albeit in the same agency, the plan actually does not provide for the implementation of such separation:

- * The risk assessment activities now carried out as part of the pesticide program at the Department of Food and Agriculture will be brought into Cal-EPA in the Department of Pesticide Regulation, where both assessment and management will take place.
- * The risk assessment activities that are now part of the toxic substances control program at the Department of Health Services will be left in the new Department of Toxic Substances Control in Cal-EPA, once again mixing assessment with management.
- * The risk assessment functions now carried out by the Health Hazard Assessment Division at the Department of Health Services will be divided: those relating to public health will be left in the Department of Health Services, while those more clearly linked to the environment will be moved to Cal-EPA to create the Office of Environmental Health Hazard Assessment.

Thus, rather than centralizing risk assessment, the Cal-EPA plan actually further fragments existing risk assessment functions by keeping intact individual program's assessment functions and splitting a previously unified program. To counterbalance this within Cal-EPA, the plan envisions OEHHA acting as a review point for assessments by the other departments. But this after-the-

fact check does little to alleviate concerns about suppression of risk assessments that are not in line with management policies.

Recommendation #2: The Governor and the Legislature should implement legislation concurrently with the Cal-EPA plan that would place all environmental risk assessment functions in one Cal-EPA unit, and should direct the Cal-EPA Secretary to establish uniform risk assessment procedures and guidelines.

Cal-EPA should position itself to fully implement the goals expressed in the reorganization proposal. These goals call for a centralized risk assessment process that is separated from risk management but still contained under the umbrella of a single agency. Control of the risk assessment process through the adoption of standardized methods will help ensure that the best science possible is employed, that public confidence in findings is bolstered and that risk management decisions are based on the best available data.

FINDING #3: To be both effective and economically efficient, environmental policies must be based on a risk management decision-making process that takes into account all potential risks, benefits and costs. This should specifically include input from the Department of Food and Agriculture on the benefits derived from the use of pesticides and the societal costs of forgoing their use.

Environmental policies and regulations are neither created nor enforced in a vacuum. There are costs associated with protecting the environment that, at times, may rise too high to be feasible. And there are benefits associated with some pollutants that are of too much value for their elimination to be tolerated. Thus, arriving at policy decisions is a balancing act that involves an assessment of the risks from a pollutant and the determination of costs and benefits involved in any mitigation action that is contemplated. Such a balancing act will result in good decisions only when the maximum amount of information from all sources is available and taken into account.

Historically at both the federal and state levels, the balancing act has been a key point of frustration for those most interested in environmental protection policies. Those who wish to see the environment remain as pristine as possible are always convinced that too much emphasis is placed on the high costs of mitigation measures and the beneficial nature of activities that create pollutants. Conversely, those who wish to carry on with economic activities appear just as convinced that environmental policies are driven by unobtainable goals that place businesses at competitive disadvantage and cause prices to soar.

Nowhere is that frustration more clearly voiced in California than over pesticide regulation. Proponents of the present system, which houses pesticide regulation in the Department of Food and Agriculture, argue correctly that the State's program is the toughest in the nation and that food testing shows the State produces crops that are safe to consume. The Commission is in agreement with this viewpoint: California's pesticide regulatory program is the most rigorous and comprehensive in the nation, and results in the cost-effective production of safe and abundant food. The Commission believes that nothing should be allowed to impair the effectiveness of this program when it is moved to the new agency. But critics can justly point to pollution of land, groundwater, water and air from the use of pesticides, as well as worker injuries, to conclude that the program, no matter how good, still falls short of protecting the environment.

Although no agricultural groups testified to the Commission against moving the pesticide program to Cal-EPA, many people associated with agricultural interests have expressed the fear that such a move will damage the State's food-producing capabilities. They worry that in the rush to stamp out pollution the economic and social benefits of the use of pesticides will be overlooked by an agency that is specifically devoted to the environment. And they have expressed concerns about the speed and flexibility with which the new agency will be able to move. Frequently pesticide use is time-oriented by growing seasons, climatological conditions or unexpected infestations that can devastate a crop quickly.

Agricultural groups are not the only ones with concerns about their role in a new Cal-EPA. With risk assessment duties split among public health and environmental functions--with some remaining behind at the Department of Health Services and some moving to Cal-EPA--many fear a loss of communication and sharing of vital information. In addition, the general public, which is affected by pollution, and those who face the regulatory process by virtue of their activities appear to feel they have had little voice in past environmental policy decision-making.

The Cal-EPA plan addresses these concerns in a general way, expressing the need for interagency agreements and memoranda of understanding between other departments and Cal-EPA. In addition, the plan speaks of the need for opening up the process to the public. However, these are expressed goals that are not functionally mandated under the plan as it would be implemented through the reorganization process.

Recommendation #3: The Governor and the Legislature should implement legislation concurrently with the Cal-EPA plan that ensures that the risk management decision-making process includes adequate input from the public, those who are regulated, and other state entities.

Legislation may take the form of establishing when and how external departments, including the Department of Food and Agriculture and the Department of Health Services, would become involved in risk management decisions. This would ensure that the current effective pesticide management program does not deteriorate when it is placed under Cal-EPA. The recommended legislation may also establish a routine process for public input that goes beyond that already required by the Administrative Procedure Act when regulations are adopted. The goal should be to allow input early enough in the decision-making process to ensure that all potential risks, benefits and costs of proposed regulations are explored.

FINDING #4: Achieving maximum compliance with state environmental policies depends on clear, cohesive regulations coupled with an even-handed vigorous enforcement effort.

The formation of clear regulations based on objective, rather than subjective, standards is vital both for the State entity that is trying to enforce the regulations and for the public that is trying to meet the mandates of the regulations. In addition, the likelihood of the public complying with regulations increases when enforcement efforts are viewed as fair, even-handed and vigorous.

The Cal-EPA proposal outlines this philosophy very clearly in one of the objectives:

Vigorous, predictable enforcement must undergird all of our efforts. Enforcement not only protects the public health, but it also assures that good

corporate citizenship is not undercut by ill-gotten gains accruing to unscrupulous competitors.

An enforcement mindset should also inform the entire regulatory process, making certain that theoretical, environmentally beneficial notions lead to real-time results.

An enforcement focus has the added benefit of leading to regulations that are simpler and more reflective of actual field experience--because a regulation that is difficult for the regulated community to decipher and comply with is also difficult for the government to enforce.

This concern for "user-friendly" regulations can be extended a step further to the permit process that underpins the activities of the independent boards. As detailed previously, different environmental protection programs have evolved separately based on the medium--air, water or land--that they are supposed to safeguard. This means that a business or individual pursuing the use of a piece of property may need to interact with more than one board, apply for more than one permit and comply with more than one set of regulations.

Since there is no single point of governmental contact where a business or individual may discover ahead of time all of the regulations that an activity or property may be subject to, anecdotes abound of projects that are in mid-stride when a new set of regulators steps in and calls activity to a halt. In addition, the Commission has noted in its own past studies that some state bodies involved in environmental functions override others, issue conflicting permit conditions, and fail to proceed in a timely manner.

The maze of permits and regulations is not only frustrating for those who are trying to comply, but is costly in terms of lost time and professional expertise that usually must be obtained if an applicant is to be protected from last-minute surprises. Several witnesses from business and industry indicated to the Commission that companies avoid basing new plants in the State and jobs are lost because of the lengthy time involved in winning approvals and the large cost of complying with the permitting process. Others expressed concerns about the inability to appeal decisions other than in court when they are caught between conflicting board rulings or when they disagree with a board's decision.

In his testimony to the Commission, Ruckelshaus commented on these issues, labeling them a "failure of process." He said:

If it takes us forever to get the decisions made, then there is a cost associated with that delay to society, which ultimately renders us uncompetitive. And that cost is often not associated with any environmental improvement. The mere fact that it takes you seven years as opposed to one year to make a decision does not necessarily mean the environment is going to be better off as a result. It is clear that it's going to cost a lot more money to do something where you have that kind of delay....We need processes, primarily formed by the Legislature, that provide some finality to our decision-making process--not that we can abandon our concern about the environment, but that we can make decisions and make them in a timely way, and make them stick."

While the Cal-EPA gives a substantial nod to these concerns, none of the specific details of the plan provide for overhauling the regulatory and permit process, creating a one-stop shopping process or providing decisions in a timely manner. This flaw, once again a byproduct of the limitations of the reorganization process, leaves the Secretary with a goal of providing a comprehensive environmental overview but without the tools he needs to implement any new priorities or processes when it comes to regulations and enforcement.

Recommendation #4: The Governor and the Legislature should implement legislation concurrently with the Cal-EPA plan that creates a uniform permit process and a uniform hearing and appeals process for all environmental protection entities. In addition, the Governor and the Legislature should direct Cal-EPA to undertake a comprehensive, integrated overhaul of environmental regulations.

The Secretary of Cal-EPA has the ability to bring together a task force with representation from each independent board to work on a uniform permit process and uniformly clear regulations. However, without legislative direction, the Secretary will have little power beyond persuasion to impose such uniformity. In addition, legislative authority to bring cohesiveness to all regulations across the various medium should focus Cal-EPA's energies in this direction so that changes can be made quickly.

FINDING #5: Since the Cal-EPA does not include all state programs that deal with environmental issues, ultimately the ability of the agency to be the lead entity for all state environmental policies may be affected.

A stated objective of the creation of a Cal-EPA is to have a single point of accountability for all state environmental protection efforts. However, the Administration's goal of keeping the Cal-EPA plan streamlined to preclude controversy and allow rapid implementation has left many state programs outside of the new agency that arguably should be included. In some cases, programs will be little affected by their exclusion, beyond frustrating those who like similar functions to be grouped in neat boxes with straight lines of authority on organizational charts. In other cases, however, a fragmentation of effort and resources seems likely to occur that runs directly counter to the goal of bringing unity to environmental policies.

Because of the time constraints imposed by the reorganization statutes, the Commission has been unable to conduct a thorough analysis of state programs that should be included in Cal-EPA. The following list, therefore, represents programs that on their surface have the potential for being brought under the Cal-EPA umbrella. One guideline employed was to separate resource programs (those related to land use planning or the use of resources, for instance) from those programs designed to protect the environment from harm through reducing or mitigating pollution.

Department of Conservation's Division of Recycling: When the State's bottle and can recycling program was created, the Legislature refused to entrust it to the then-Waste Management Board because of that entity's heavy tilt toward landfills (the Commission concurred with this description of the Board in its July 1989 report on solid waste management). The recycling program instead was placed in the Department of Conservation in the Resources Agency. Since

then, however, a new Integrated Waste Management Board has been created with a specific mandate to focus on recycling as a priority. It would appear to be counterproductive to have the Board entrusted with encouraging recycling in one agency and the program that actually conducts recycling in another. However, an argument could be made that recycling is actually the creation of resources, and that only the Board's activities relating to the siting of landfills and controlling any pollution from them properly belong in Cal-EPA.

Department of Health Services' Radioactive Materials Program: This entity deals with siting waste disposal areas for low-level radioactive wastes. With the risk assessment functions for these types of hazards housed in Cal-EPA, the program appears to be a reasonable fit for the new agency.

State Fire Marshal's Hazardous Liquid Pipelines Program: This program monitors pipelines for gasoline, oil and natural gas and was created in response to a San Bernardino railroad incident where a train crash ruptured a pipeline in a residential area. While the immediate issue is one of public safety during an accident--an apt area for the Fire Marshal--the overall regulation and monitoring of systems that may pollute the environment is a role that Cal-EPA should fill.

Department of Health Services' Office of Drinking Water: This program monitors chemicals in drinking water, interacting primarily with the Water Resources Control Board, which will be in the Cal-EPA agency. In addition, since the Cal-EPA plan places the setting of recommended public health levels for drinking water contaminants in its risk-assessment office yet leaves other drinking water standards and enforcement in the Department of Health Services, there is the potential for this program to become fragmented and less effective.

Office of Emergency Services' Hazardous Materials Management Program: This program, created in the wake of a Los Angeles warehouse fire where burning pesticides killed firemen, requires facilities to have chemical inventories that are shared with police and fire officials. The program also inspects facilities to try to avoid chemical releases in the air, such as the one in Bhopal, India, that killed thousands. Some of the program's activities mirror duties of the Air Resources Board, which will be housed in Cal-EPA, while others may provide Cal-EPA with an overall data base of information that would be useful in regulating potential polluters.

Department of Fish and Game's Office of Oil Spill Prevention and Response: This new program was recently created in response to the Alaskan oil spill. Not only is this program a good fit for the overall environmental protection goals of Cal-EPA, but an earlier study by the Commission indicates that the Department of Fish and Game is already overburdened with existing programs that divide its attention between environmental protection and game management issues.

Bureau of Automotive Repair's Smog Certification Program: Common sense dictates that this program, which checks automobile smog equipment every two years, would be run by the Air Resources Board since its focus is preventing air pollution. However, when it was created, the program was placed in the Department of Consumer Affairs to facilitate licensing of inspectors and to ensure there is a strong consumer protection component to the program. Nonetheless, by function and goals, this program belongs in Cal-EPA.

Department of Health Services' Hazardous Materials Lab: This lab handles the analysis of substances for toxic contamination. Since the risk assessors are being moved to Cal-EPA, this

lab may work more closely with assessors if it, too, is moved. Conversely, the lab may function more effectively if left in the Department of Health Services where the whole system of state testing labs now may share information and duties as needed.

In addition to the above programs, there are others that could be candidates for moving into Cal-EPA but in many ways better suit the mission of agencies where they now reside. For instance, the Energy Commission deals with the development of a resource but makes key decisions that affect the environment when power plants are sited and air quality issues are considered. The Coastal Commission has a strong role in environmental issues such as the development of offshore oil, but largely exists to deal with issues such as land use planning and growth management.

Other programs for which exclusion from Cal-EPA may be more clear include: the workplace carcinogen program in the Department of Industrial Relations; the regulation of Hazardous Substances Transporters, now undertaken by the California Highway Patrol as part of its duty to inspect all trucks; the role of the Office of Emergency Services in planning for nuclear accidents; and the Department of Commerce programs designed to assist businesses that must install pollution control equipment.

Recommendation #5: The Governor and the Legislature should direct Cal-EPA to report within six months about the feasibility, desirability and consequences of bringing other state programs into Cal-EPA.

There are many programs that are candidates for inclusion in Cal-EPA that would strengthen the new agency's role as lead authority for environmental protection matters. Among those are the Division of Recycling, the Office of Oil Spill Prevention and Response, the Radioactive Materials Program, the Hazardous Liquid Pipeline Program, Office of Drinking Water, Hazardous Materials Management Program and the Smog Certification Program. An analysis and recommendation by Cal-EPA would give guidance to future legislative efforts to expand the agency to its full potential.

FINDING #6: Costs, savings and sources of revenue associated with the creation of a Cal-EPA cannot be determined based on the plan submitted.

The Cal-EPA plan makes no claims for long-term savings through the operation of environmental protection programs under a consolidated leadership, nor does the plan provide details on costs and sources of revenue. Budget proposals submitted separately from the plan appear to be keyed to one-year excess revenues in certain funds, and there are no long-term projections for the cost of added functions and agency growth in the next five years. Overall, the plan is too skimpy in fiscal details to allow an assessment of its potential budgetary impact.

Cost information given to the Commission on May 21 is attached in **Appendix A** in the form in which it was submitted. But the chart on the next page highlights the details.

1991-92 Cal-EPA Budget

<u>Organization</u>	<u>Staff</u>	<u>Budget</u> <u>(in thousands)</u>
Integrated Waste Management Board	320.7	\$ 56,175
Air Resources Board	835.3	\$ 91,759
Water Resources Control Board (Includes regional boards)	1,305.3	\$356,896
Department of Toxic Substances Control	936.5	\$100,374
Department of Pesticide Regulation	356.1	\$ 44,165
Office of Environmental Health Hazard Assessment	90.2	\$ 8,659
Office of the Secretary		
Base	18.5	\$ 2,566
Minus programs left in Air Resources 1991-92 revised base	<u>-6.5</u> 12.0	<u>\$ -1,217</u> \$ 1,349
Proposed increase	17.0	\$ 2,169
Total for Office of Secretary	<u>29.0</u>	<u>\$ 3,518</u>
Total	<u>3,873.1</u>	<u>\$661,546</u>

As the chart above shows, a total of \$661.5 million and 3,873.1 personnel years are slated for Cal-EPA activities for the 1991-92 fiscal year.

The majority of the expenditures and personnel come from the three independent boards being moved into Cal-EPA in their entirety, with existing staff and budgetary levels. These three boards represent 2,461.3 personnel years and expenditures of \$504.8 million.

The Department of Toxic Substances Control, the Department of Pesticide Regulation and the Office of Environmental Health Hazard Assessment also are moved into Cal-EPA in their entirety from the Department of Health Services and the Department of Food and Agriculture, including a pro-rated share of the Department's budget for administrative overhead. The budgeted figures for these three entities, therefore, includes not only the current funds allocated for the programs, but

also an added overhead cost of approximately 5 percent. The totals for this part of Cal-EPA are 1,382.8 personnel years and a budget of \$153.2 million.

Finally, the Office of the Secretary of Environmental Protection calls for a total of 29 personnel years and an expenditure of \$3.5 million. The base figure shows that 18.5 personnel years and \$2.6 million would have been expended if the Environmental Affairs unit had remained as an adjunct of the Air Resources Board. The Cal-EPA plan proposes leaving 6.5 personnel years and a budget of \$1.2 million, along with certain non-agency type of programs, with the Air Resources Board. In addition, the submitted budget envisions the creation of 17 new positions (please see page iv of **Appendix A** for details) with added expenditures of \$2.2 million.

This last amount, \$2.2 million, is the only expense above and beyond current year expenditures that is anticipated for the first-year operation of Cal-EPA. Rather than seeking to cover this cost from fiscally strapped General Funds, the plan envisions taking \$1.3 million in Motor Vehicle Account funds that would normally go to the Air Resources Board and \$582,000 in Integrated Waste Management Account funds that have remained unused while the board was being appointed and put into operation during the past year. Finally, the budget requires \$188,000 from the Department of Food and Agriculture and \$124,000 from the Water Resources Control Board. No money is expected to be forthcoming from the Department of Health Services.

This plan leaves several major questions unaddressed. Among them:

- * The elevation of programs to full department status should involve added personnel costs (a department head commands a larger salary than a program chief), yet none are budgeted.
- * In future years, there may not be unexpended Integrated Waste Management Account funds available. It also may make little sense to have the Department of Food and Agriculture contribute extra amounts beyond those already given up as part of the pesticide regulation program. What stable source of funding will be worked out for the future and how will costs be allocated among those who are being regulated?
- * As the agency grows, new programs are added and additional functions are authorized, what incremental costs can the State expect to face?

Savings that may be produced by program consolidation, increased efficiency once duplicative activities are eliminated and coordinated enforcement efforts are nowhere predicted in the plan. The Administration has offered the opinion that true cost savings will show up outside of the State's budget. National figures provided by the Administration indicate that while the federal EPA spends about \$7 billion on enforcement and regulation activities, those who are regulated spend about \$114 billion complying. Rather than savings in the State's budget, a streamlined approach to environmental protection may yield the most savings in costs that are borne by those being regulated.

With so little budgetary detail and no projection of future revenues and expenditures, it is very difficult to assess the cost-effectiveness of Cal-EPA.

Recommendation #6: The Governor and the Legislature should direct Cal-EPA to report within six months about short- and long-term costs and savings associated with Cal-EPA, as well as anticipated sources of revenue.

Only with further information and projections can the Administration and the Legislature judge the value of Cal-EPA in relation to the costs incurred by its creation and operation. Such a report would serve as a efficiency guidepost for future legislative additions to the new agency.

FINDING #7: The prevention and interdiction of pollution before it occurs and the promotion of alternative pollution-free technology are key steps to protecting the environment.

Much of environmental protection activities today are aimed at addressing pollution once it has occurred: requirements for mitigation of damages from pollutants and regulations to limit the amounts of pollutants that may be discharged. But truly effective environmental protection would include preventive measures that discourage the use of pollutants to start with, encourage the development of pollutant-free technologies and provide incentives to use environmentally safe alternatives.

The Cal-EPA plan addresses this issue in one of its objectives:

Environmental protection and economic progress should not be viewed as competing goals, but, to the greatest possible extent, as complementary. Where traditional command and control regulation can be effectively supplemented or supplanted by environmentally protective and legally enforceable market incentive arrangements, we should do so.

We should also encourage research and development of environmentally protective technologies, and strive to harness the energy of the free market for environmental improvement.

The government should provide information, working alongside profit and non-profit enterprises, which can enable private businesses--particularly small businesses--to move toward production processes which are at once environmentally protective and economically successful.

The goal expressed above displays a sensitivity to the economic climate of California, which in many ways affects its residents as profoundly as the physical environment. But there are no specifics in the Cal-EPA plan that follow through and implement functions that may work toward fulfilling this objective.

Recommendation #7: The Governor and the Legislature should create the Office of Pollution Prevention within Cal-EPA to promote pollution interdiction, market incentives and alternative technologies.

Without a direct allocation of resources and expansion of authority, pollution prevention may be pushed into the background of the new agency. Yet this pro-active approach to environmental protection may hold the most promise for effectively and efficiently coping with the dual needs of Californians for a healthy economic and physical environment.

Conclusion


The Cal-EPA plan contains goals and objectives that few argue with. The plan envisions the creation of an agency that would bring cohesiveness to the State's environmental policies and streamline regulatory and enforcement efforts in a way that would benefit both the State and those being regulated. Further, the plan speaks of a commitment to encouraging the development of alternative technologies and discouraging the use of potential pollutants without putting a stranglehold on the State's ability to be economically competitive.

Although the plan contains few specifics that actually will lead to the fulfillment of the goals outlined above, the Commission recognizes that this is largely due to the limitations of what may be achieved during a reorganization process. But other goals are within reach through the simple creation of Cal-EPA: creating a primary point of accountability for state environmental programs, reducing overlapping bureaucracies, assuring a Cabinet-level voice for environmental protection and allowing for more rapid deployment of government forces to meet environmental needs.

After analyzing the proposed plan and the potential it holds for the future, the Commission urges the creation of Cal-EPA as a first step toward improving the State's environmental policy process. In addition, the Commission has made six recommendations for modifications and additions to the new agency that should expand its authority and provide it direction for implementing the many objectives put forth by the Administration.

Finally, the Commission will review Cal-EPA's programs one year after its creation in order to assess progress that has been made and advise the Governor and the Legislature on any further steps that need to be taken.

Sincerely,



Nathan Shapell, Chairman
Haig Mardikian, Vice Chairman
Senator Alfred Alquist*
Mary Anne Chalker
Arthur Gerdes
Albert Gersten
Senator Milton Marks
Assemblywoman Gwen Moore
Angie Papadakis
Abraham Spiegel
Barbara Stone
Richard Terzian
Assemblyman Phillip Wyman*

* Indicates Commissioners dissenting on the report. Dissent letter attached to the back of the report.

APPENDIX A
Budget and Staffing Information Submitted by the Administration

BUDGET AND STAFFING TOTALS

(Dollars in thousands)

<u>Organization</u>	<u>Staff</u>	<u>Budget</u>
Office of the Secretary		
1991-92 Base	18.5	\$2,566
Minus transfers out	<u>-6.5</u>	<u>-1,217</u>
Revised Base	12.0	\$1,349
Plus proposed increase	<u>17.0</u>	<u>\$2,169</u>
Revised Total	29.0	\$3,518
Integrated Waste Management Board	320.7	56,175
Air Resources Board	835.3	91,759
Water Resources Control Board (includes State and Regional Boards)	1305.3	356,896
Department of Toxic Substances Control	936.5	100,374
Department of Pesticide Regulation	356.1	44,165
Office of Environmental Health Hazard Assessment	90.2	8,659
 Total	 3873.1	 \$661,546

These figures are preliminary and may be adjusted as additional detail becomes available regarding the allocation of administrative support costs.

No.: OEP-1
 Date: May 14, 1991

BUDGET CHANGE PROPOSAL SUMMARY
 for
Fiscal Year 91/92

ORGANIZATION CODE: 3400 DEPARTMENT: Air Resources Board

PROGRAM: ELEMENT: COMPONENT:
 R-34 Environmental Affairs N/A N/A

TITLE OF PROPOSED CHANGE:
 Secretary for Environmental Protection

SUMMARY OF PROPOSED CHANGES:

Augment Office of Environmental Protection budget to meet increased workload.

Nature of Proposal: Expansion of Existing Function

FISCAL IMPACT:

	Appropriation No.			Dollars (In Thousands)		
	(Org)	(Ref)	(Fund)	PY	CY	BY
<u>Existing Program:</u>	3400	- 001	- 001 (GF)	\$ 428	\$ 432	\$ 0
	3400	- 001	- 014 (HWCA)	0	0	99
	3400	- 001	- 044 (MVA)	323	330	752
	3400	- 001	- 164 (OCS)	1,950	1,850	500
	3400	- 001	- 893 (OEAP)	46	18	18
Reimbursements	3400	- 001	- 995 (Reim)	573	1,038	1,197
			TOTAL	\$ 3,320	\$ 3,668	\$ 2,566
			Personnel Years:	18.8	19.2	19.2
<u>Proposed Changes:</u>	3400	- 001	- 044		\$	\$ 1,275
	3400	- 001	- 387		\$	\$ 582
Reimbursements	3400	- 001	- 995		\$	\$ 312
TOTAL					\$	\$ 2,169
Positions:						17.0
Personnel Years:						18.0

I. Problem

Significant new demands have been imposed on the Office of Environmental Protection due to Executive Order W-5-91, which separated the formerly-combined roles of Environmental Secretary and Chairperson of the Air Resources Board. This Executive Order, issued on March 4, 1991, directs that the Air Resources Board, Water Resources Control Board, and Integrated Waste Management Board communicate with the Governor through the Secretary for Environmental Protection. This reporting relationship is to continue, as an interim measure, until a single cabinet-level agency for environmental protection has been created. As outlined more specifically below, the Office of Environmental Protection does not have the staff and resources to meet the needs imposed by the Executive Order.

On April 16, 1991, the Governor submitted Governor's Reorganization Plan Number 1 creating the California Environmental Protection Agency (Cal-EPA) to the Legislative Counsel and, subsequently, the Commission on California State Government Organization and Economy. Legislation has also been introduced (AB 1122, Sher, and SB 51, Torres) which would create a Cal-EPA. The Office is not staffed to meet the additional demands that would result from the creation of the Cal-EPA.

The Governor's Reorganization Plan outlines the functions to be performed in the Office of the Secretary. The Secretary will serve as the primary point of accountability, reporting directly to the Governor, for the management of environmental protection programs. The Office of the Secretary will bring together functions which cut across the various programs designed to address pollution in a single medium (e.g. air, surface water, ground water, land). The activities of the Office will include budget review, review of personnel management, intergovernmental relations, legislative liaison, enforcement coordination, information management coordination, strategic planning and pollution prevention, a public advisor role, a science advisor role, and public information and communication.

Improved integration of California's complex, decentralized environmental protection programs would provide significant benefits. Resources could be better targeted towards those areas presenting the greatest threat to public health and the environment. Business "overhead" costs currently incurred to merely understand the maze of regulatory requirements could instead be used to bring about substantive environmental improvements.

To address its responsibilities, in particular the technical aspects of cross-program coordination and integration, the Office intends where possible to use personnel on rotating assignments from the Agency's constituent boards and departments. This approach serves several purposes--it is economical and avoids the creation of a large permanent bureaucracy at the Agency level; it

ensures that the necessary technical and programmatic skills can be assembled in a timely and flexible manner; and it will instill a cross-media focus in those staff who have participated, who then will return to their host programs with an improved appreciation of the need to address environmental problems in an integrated fashion.

Despite the aggressive use of rotational assignments, however, the ongoing resources currently available to the Office are clearly inadequate to bring about the improvements that the Governor and the Legislature are seeking.

II. Reason Why Problem Is Not Being Met With Current Resources

Under current arrangements, the Office of Environmental Protection in the Air Resources Board (formerly known as the Office of Environmental Affairs) provides staff support for environmental protection functions. This arrangement is a holdover from the period during which the Chairperson of the Air Resources Board also served as Environmental Secretary.

The Office of Environmental Protection has 18.5 budgeted positions, of which 6.5 are assigned to what are essentially "line" functions housed in the Office (administration of the Coastal Grants program, the Local Marine Fisheries Impact Program, the Registration of Environmental Assessors program, and the Hazardous Substance Cleanup Arbitration Panel). An additional 7 positions in the Office of Hazardous Materials Data Management perform traditional Secretary-level program coordination functions, but are relatively specialized. Thus there are only 5 budgeted positions available for overall Office of Environmental Protection management and support.

Limited additional resources (7 positions and \$971,000) must be added to the existing Office of Environmental Protection within the Air Resources Board to implement the Governor's Executive Order. Positions in this category, which are needed whether or not the Governor's Reorganization Plan takes effect, include the Secretary, Executive Officer, Deputy Secretary, and four Office Technicians (receptionist plus clerical support). Taken together with the 5 positions currently available for overall management and support, this increment of additional staffing provides the minimum complement needed to support the Secretary's immediate staff needs.

The second increment (10 positions and \$1,198,000) includes those additional resources that would be needed in the event that Cal-EPA is established. As noted above, the creation of Cal-EPA will impose significant new demands upon the Office. Identified needs that could not be met include the Undersecretary, Deputy Secretary for Law Enforcement, Science Advisor, Staff Counsel, Press Officer, Public Advisor, Assistant for Internal Administration, and related support. The identified professional

functions are by their nature quite diverse and require different types of skills. Therefore it generally is not possible to combine multiple functions into a single position. In those instances where it is possible, such consolidation has already been taken into account in this budget proposal.

III. Budget Change Proposal

A. Objective

Provide the resources necessary to allow the Cal-EPA to function as a full-fledged Agency within State Government and meaningfully address the complex environmental issues within its jurisdiction.

B. Analysis of Alternatives

1. Maintain current staffing

As noted above, 5 positions are currently available for overall Agency management and policy guidance, and 7 positions in the Office of Hazardous Materials Data Management provide technical support on information management and program integration issues. This staffing level is clearly inadequate to meet the current requirements imposed by the Executive Order. At a minimum, funding is needed to support the staff and operating costs resulting from the establishment of the Secretary's office separate and distinct from the Office of the Chairperson of the Air Resources Board (Secretary, Executive Officer, Deputy Secretary, and related clerical support). Creation of the Cal-EPA will result in additional unfunded needs.

2. Redirect existing staff

Under this alternative, 6.5 positions assigned to line programs (administration of the Hazardous Substances Arbitration Panel, Environmental Assessors, Coastal Grants, and Local Marine Fisheries Impact programs) would be redirected to other Agency needs. This approach is not feasible because those programs have ongoing workload requirements that must be addressed in some fashion.

3. Transfer 6.5 positions out of the Agency, and add 17 new positions, for a net increase of 11.5 positions.

The establishment of Cal-EPA provides an opportunity to re-align programs that need not be housed at the Agency level. We propose that administration of the Hazardous Substances Arbitration Panel, the Registration of

Environmental Assessors Program, the Coastal Grants Program, and the Local Marine Fisheries Impact Program (6.5 positions total) be transferred to the Air Resources Board. These changes are to be accomplished via legislation and would take effect on January 1, 1992.

This approach would limit Agency activities to traditional overall management, program integration, and policy guidance, and would provide the resources necessary to effectively address the problems that Cal-EPA is being created to resolve.

The proposed changes would result in total Agency staffing of 29 positions, which is in keeping with the level of resources available to other Agencies in state government.

C. Recommendation

Approve Alternative 3. This alternative provides Cal-EPA with resources commensurate with the need, and similar to other Agencies within state government.

D. Implementation

Implementation of the first staffing increment will begin on July 1, 1991, or immediately after the state budget is approved by the Governor and the Legislature, whichever comes first. Implementation of the second increment will begin on the effective date of the new Cal-EPA.

Date: 5/14/91

FISCAL DISPLAY
1991-92 Fiscal Year

TITLE OF PROPOSAL: Secretary for Environmental Protection

CHANGES IN AUTHORIZED POSITIONS:

Classification	Salary Range	Personnel Years	Expenditures
Secretary	\$8867	1.0	106,000
Undersecretary	7600	1.0	91,000
Deputy Secretary	7387	2.0	178,000
CEA II	5631-6209	2.0	136,000
Sr. Staff Counsel	5326-6444	1.0	64,000
Executive Officer	5292	1.0	64,000
CEA I	5124-5649	2.0	122,000
Executive Secretary II	2347-2852	1.0	34,000
Staff Services Analyst	2200-2638	1.0	26,000
Executive Secretary I	2157-2621	1.0	29,000
Office Technician	1885-2290	4.0	102,000
Temporary Help		1.0	20,000
		-----	-----
Total Salaries		18.0	\$972,000
Staff Benefits - OASDI			74,000
- Retirement			127,000
- Health			67,000
		-----	-----
TOTAL PERSONAL SERVICES		18.0	\$1,240,000
OPERATING EXPENSES & EQUIPMENT			
General Expense			152,000
Communications			39,000
Training			15,000
Travel-in-State			39,000
Travel-out-of-State			57,000
Facilities			205,000
Consultant Services			333,000
Equipment			89,000

TOTAL OPERATING EXPENSES & EQUIPMENT			\$929,000
TOTAL, EXPENDITURES			\$2,169,000
FUNDING:			
Motor Vehicle Account			1,275,000
Integrated Waste Management Account			582,000
Reimbursements			312,000

PLEASE REPLY TO:

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(805) 945-3544
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STATE'S ECONOMY

Assembly California Legislature

PHILLIP D. WYMAN
ASSEMBLYMAN, THIRTY-FOURTH DISTRICT

VICE CHAIRMAN
ASSEMBLY REPUBLICAN CAUCUS

June 4, 1991

Mr. Nathan Shapell
Commission on California State Government
Organization and Economy
1303 J Street, Suite 270
Sacramento, CA 95814

Dear Nathan:

We wish to express our general support for the substance of the Commission's report regarding Governor Wilson's Government Reorganization Plan #1. Regretfully, however, there are specific recommendations and findings with which we cannot agree. The Commission's report would receive our full endorsement if the following revisions are incorporated.

Revision One: Revise the existing recommendation #2 to to read:

Recommendation #2: The Governor and the Legislature should implement legislation concurrently with the Cal-EPA plan that would place, with the exception of CDFA's pesticide program, all environmental risk assessment functions in one Cal-EPA unit, and should direct the Cal-EPA Secretary to establish uniform air, water and toxic risk assessment procedures and guidelines.

Revision Two: Include a finding and recommendation to state the following:

Finding: California's pesticide regulatory program is the most rigorous and comprehensive in the nation, and results in the cost-effective production of the safest possible food supply.

California spends more than \$40 million each year to regulate pesticides and their use in our state. As a result of comprehensive assessment, monitoring and registration programs, California produces the most food of the highest quality in the nation.

Before a pesticide can be registered for use in the state, it undergoes scrutiny, testing and evaluation on the federal and state level. The California Dept. of Food and Agriculture conducts ongoing consultation with numerous agencies, including the Dept. of Fish and Game, the Dept. of Health Services and the State Water Resources Control Board to safeguard against contamination of our resources.

Everyone who uses a pesticide for agricultural purposes must complete detailed reports regarding every application of every pesticide.

County agricultural commissioners monitor use of pesticides and spend a great deal of their time in the field insuring the enforcement of our pesticide laws and regulations.

The pesticide residue monitoring program conducted by the Dept. of Food and Agriculture every year confirms residue levels far below scientifically established safety thresholds.

Recommendation: The pesticide program administered by the California Dept. of Food and Agriculture should remain intact within that department. However, a formal arrangement for consultation with Cal-EPA regarding regulatory action should be established.

Many people associated with agricultural interests have expressed the fear that moving CDFA's pesticide program to a Cal-EPA will damage the State's food-producing capabilities. They worry that by taking such a questionable step the economic and social benefits of the use of pesticides will be overlooked by an agency that is specifically devoted to the environment. Frequently, pesticide use is time-oriented by growing seasons, climatological conditions or unexpected infestations that can devastate a crop quickly.

To remove the pesticide program from CDFA in its entirety and place it within a Cal-EPA would result in the displacement of all staff now residing at CDFA who have invaluable institutional knowledge regarding a program that has been developed and fine-tuned over the last 80 years.

Testimony from witnesses revealed concern for the dual-agency oversight of county agricultural commissioners that would be required by the proposed Cal-EPA plan. Commissioners now report exclusively to CDFA regarding all of their responsibilities. Under the proposed plan, they would inherit a second boss -- the Cal-EPA, where they would be required to report regarding pesticide enforcement.

The pesticide program is funded through a mil tax on the sale of pesticides. Some are concerned that this money, once incorporated into an environmental agency budget, could be diverted to fund non-agricultural programs.

Mr. Nathan Shapell
Page 3

The pesticide regulatory program conducted by the California Dept. of Food and Agriculture is already efficient, self-contained and arguably the most efficient environment-related program run by any state agency. To tamper with a program that works so efficiently is counter-productive, contradicts the statutory objectives of a reorganization plan, is contrary to the administration's stated goals, and thus, we strongly recommend leaving pesticide regulation within the existing structure at CDFA.

Sincerely,



Senator Alfred Alquist



Assemblyman Phillip D. Wyman

PDW:ceb

LITTLE HOOVER COMMISSION FACT SHEET

The Little Hoover Commission, formally known as the Commission on California State Government Organization and Economy, is an independent state watchdog agency that was created in 1962. The Commission's mission is to investigate state government operations and through reports and recommendations promote efficiency, economy and improved service.

By statute, the Commission is a balanced bipartisan board composed of five citizen members appointed by the Governor, four citizen members appointed by the Legislature, two Senators and two Assembly members.

The Commission holds hearings once a month on topics that come to its attention from citizens, legislators and other sources. But the hearings are only a small part of a long and thorough process:

- * Two or three months of preliminary investigations and preparations come before a hearing is conducted.
- * Hearings are constructed in such a way to explore identified issues and raise new areas for investigation.
- * Two to six months of intensive fieldwork is undertaken before a report, including findings and recommendations, is written, adopted and released.
- * Legislation to implement recommendations is sponsored and lobbied through the legislative system.
- * New hearings are held and progress reports issued in the years following the initial report until the Commission's recommendations have been assimilated.

Additional copies of this publication may be obtained from:
Little Hoover Commission
1303 J Street, Suite 270