

April 1969

Connecticut's Administrative Control of Water Pollution: the Fluid Administrative Process

Theodore H. Focht
Institute of Water Resources

Follow this and additional works at: https://opencommons.uconn.edu/ctiwr_specreports

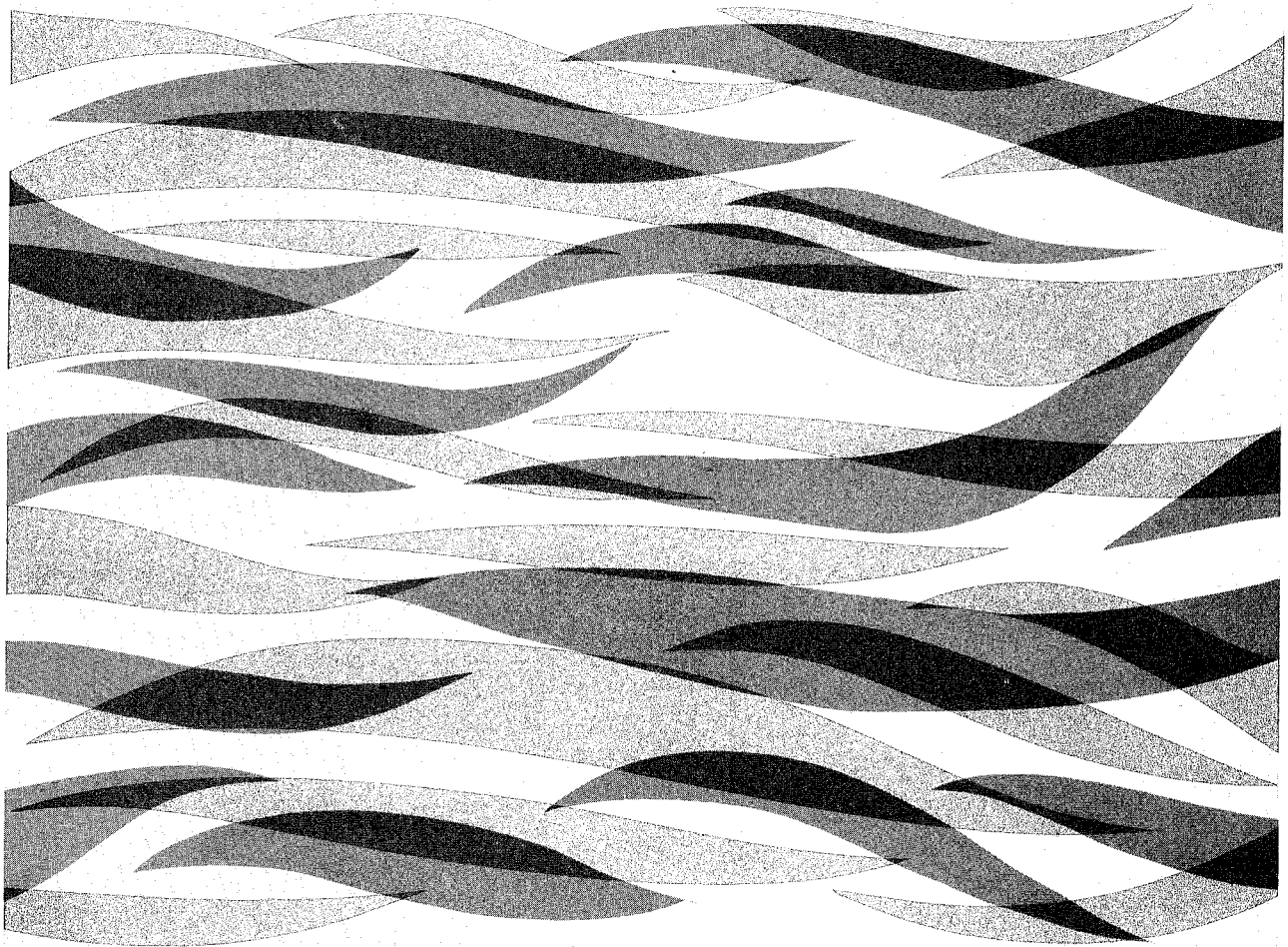
Recommended Citation

Focht, Theodore H., "Connecticut's Administrative Control of Water Pollution: the Fluid Administrative Process" (1969). *Special Reports*. 10.
https://opencommons.uconn.edu/ctiwr_specreports/10

Connecticut's Administrative Control of Water Pollution— The Fluid Administrative Process

Report No.8

April 1969



**INSTITUTE OF WATER RESOURCES
The University of Connecticut**

Report No. 8

August 1969

**CONNECTICUT'S ADMINISTRATIVE CONTROL OF
WATER POLLUTION — THE FLUID ADMINISTRATIVE PROCESS**

Theodore H. Focht
Associate Professor of Law
The University of Connecticut
School of Law
West Hartford, Connecticut 06117

The research on which this publication is based was supported in part by funds provided by the United States Department of the Interior as authorized under the Water Resources Research Act of 1964, Public Law 88-379.

ACKNOWLEDGMENTS

I wish to acknowledge the cooperation and encouragement of Dr. William C. Kennard, Director of the Institute of Water Resources, Storrs, Connecticut, as well as the help and stimulus provided by my colleagues on this project — Robert Reis, now of the School of Law of the State University of New York at Buffalo, and Dr. Robert Leonard, Department of Agricultural Economics, The University of Connecticut. In addition, I wish to acknowledge the substantial research contribution provided by Richard Tomeo, Esq., of the Connecticut Bar, and Juri Taalman, a law student here at The University of Connecticut School of Law.

Many individuals in our State's administrative service have been invaluable aids during this project. William Wise, former Director of the Water Resources Commission, and David C. Wiggin, Di-

rector, Division of Sanitary Engineering, State Department of Health, have both been most cooperative in making the files and facilities of their respective agencies available to me, and they have been most generous in sharing the benefits of their years of experience in wrestling with the problems discussed herein. Mrs. Callista Hamilton, Executive Assistant at the Water Resources Commission, has been most helpful in guiding me to available Commission materials. Finally, the employees of both the Department of Health and the Water Resources Commission have been generous in their cooperation. Perhaps the strongest message of this article is that the administrative process, certainly the informal administrative process, cannot work effectively without the kind of dedication displayed by many of our state administrative employees.

T. H. F.

INTRODUCTION

The earliest settlers in Connecticut established their communities along supplies of clean fresh water which abounded in the "land along the long river." The availability of an excellent water supply was undoubtedly responsible for the early development of an industrial economy in the fledgling colony, and with this development came the problems of pollution of the waterways of the state. The first grist mill in Connecticut was built in Wethersfield by the banks of the Connecticut River in 1637, and with the abundant source of water power, other mills appeared along streams throughout the state.

Perhaps the earliest pollution occurred when a paper mill (notorious sources of water pollution) was established in Norwich in 1768, followed by another one in East Hartford in the year the colonies gained their independence from Great Britain. The State's industries, in size, number and type, increased; the State's population increased; the State's water supplies did not. However, because of the abundant supply of clean fresh water, this section of the country has not experienced the concern over maximum preservation and use of water that has been so evident in the southwestern part of the United States. Indeed, Easterners can be accused of having taken clean fresh water for granted. Recent droughts, water use restriction, and continually increasing fouled waters have made inroads into the apathy. Not only in Connecticut, but throughout the Northeast, the attitude has now become one of deep concern for the future. So much so, as a matter of fact, that water use and water use regulation have been a major issue in state and national campaigns in recent elections. In addition, a good deal of literature on this subject has been appearing.¹

Contrasted with formal governmental activities in the preservation and enhancement of water resources in other parts of the country, the level of state activity in the Northeast, particularly Connecticut, has been minimal, at best. Although one of the first states to enact water pollution laws, Connecticut could for many years have been described as among the leaders of the indifferent. True, there had been some legislation taking "potshots" at some of the questions of water use, water priorities, economics of water use, pollution controls, waste disposal, and water for municipal and industrial use, but there had been an absence of *meaningful* State legislation on many of these questions. Although it is too soon after its enactment to be certain, the Water Pollution Control Act of 1967² may open the door to more meaningful activity in these important areas. The Water Resources Commission, which, since 1957, has been the major State agency concerned with matters of water pollution, has been given expanded powers and purposes under this legislation. There is some concern, however, that the very essence of systematized and meaningful legislation and water planning is missing when neither staff, funds nor facilities are provided to carry into effect the grandiose schemes of legislation.

With public activities in the area of water resources nonexistent prior to 1925 and at a minimal level for many years since then, where have advances in means of water use and water use controls come from in the past year? Decisions affecting water use have been left, by the absence of aggressive State activity, to the private sector, and advances in means of water use and the resolution of water use controversies have been left to the devices of the private market and the pressures of

-
1. E.g., Goldman, *Controlling Pollution: The Economics of a cleaner America*, (Prentice-Hall, 1967); Reis, *Connecticut Water Law: Judicial Allocation of Water Resources*, (Institute of Water Resources, University of Connecticut, 1967); World Health Organization, *Control of Water Pollution; A Survey of Existing Legislation*, (Geneva, 1967); Flood, *Legislating Clean Water*, 3 Portia L. J. 39 (1967); Nebolsine, *Today's Problems of Industrial Waste Water Pollution Abatement*, 1 Natural Resources Law 39 (1968); Maloney, Plager & Baldwin, Jr., *Water Pollution - Attempts to Decontaminate Florida Law*, 20 U. Fla. L. Rev. 131 (1967); and *Water Pollution Control in Washington*, 43 Wash. L. Rev. 475 (1967).
 2. Conn. Pub. Acts (1967, Jan. Session) No. 57. Because of the importance of this legislation to the future of administrative regulation of water pollution, the act is reproduced at the end of this article as Appendix A.

economic allocation of water rights and water use. The purpose of this paper is to inquire into the present status of administrative regulation of water rights in Connecticut, especially as it operates in the area of pollution control. After an initial look at the broad scheme of administrative regulation in Connecticut, two administrative case studies will be extensively examined with the hope that they will reveal meaningful insights into the way the administrative process has worked.

The first case study explores the four decades of frustration experienced by our State and local officials in their efforts to deal responsibly with the municipal sewage waste of three communities in Connecticut — Ansonia, Derby, and Shelton. This case is especially helpful since it indicates the long process sometimes necessary to reach a satisfactory solution to a major pollution problem. In addition, it highlights the virtues and shortcomings created by having two State administrative bodies, the Water Resources Commission and the Department of Health, with joint responsibilities for the handling of a problem. Finally, it is of significance because it is one of the few pollution

problems in this State which has moved from the administrative realm of State government into the Supreme Court of Errors.³

The second case study will examine the Federal Paper Board Company, Inc., in Versailles, Connecticut, and its problem of industrial waste discharge into the Little and Shetucket Rivers. In contrast to municipal sewage discharge problems where there is joint administrative responsibility, problems of industrial waste are handled solely by the Water Resources Commission. While the difficulties of the Federal Paper Board Company's pollution problem have not resulted in judicial proceedings in this State, it must also be noted that the problem has not yet been solved, if, indeed, it can ever be completely solved.

Finally, the new anti-water pollution legislation⁴ will be examined to consider to what extent it may help the administrative regulation of these problems, and some suggestions of what might be done to achieve the goal and objective of a more responsive and responsible administrative system will be offered.

3. *Derby v. Water Resources Commission*, 148 Conn. 584, 172 A. 2d 907 (1961).

4. Water Pollution Control Act of 1967, Conn. Pub. Acts (1967, Jan. Session) No. 57.

A SURVEY OF THE ADMINISTRATIVE REGULATION OF POLLUTION IN CONNECTICUT

The first recorded action by the Connecticut General Assembly looking towards administrative regulation of the water resources in this State occurred on March 24, 1886 when an Act was passed authorizing the State Board of Health to investigate and ascertain the facts in relation to the pollution of the waters of the State.⁵ This initial thrust by the State in the area of administrative attention to the problem of water pollution was followed by many other studies. For example, on June 12, 1897, at its regular session, the General Assembly authorized the formation of a sewer study commission to investigate the subject of sewage disposal in the cities, boroughs, and towns of Connecticut.⁶ This Commission reported to the General Assembly in 1899, and its report concluded with the following rather prophetic paragraphs:

The State is now at the parting of the ways.

It may leave the whole matter to drift as it will. Our smaller streams will then become more and more polluted, and at last will be so foul during the summer months that private individuals, plagued beyond endurance, will undertake the expense and wearisome delay of lawsuits, and after years of litigation, it may be, will at last succeed in holding up those cities which have most contributed to the defilement and force them to discontinue it and spend hundreds of thousands of dollars in changing their system of disposal. This is what is going on in this state today.

Or the State may take up the matter and seek, without unduly interfering with municipalities or manufacturing industry, to stop further pollution of our streams and reduce the present amount of it in the interest of public comfort and health.

Such a policy will need to be framed and executed with great judgment so as always to

have behind it the force of public opinion, to be consistent and continuous in its operation, and to be administered with strict impartiality.

This course, we believe, the State should adopt.⁷

The 1899 report was one of the first, but certainly not the last, study made of water pollution problems in Connecticut. On June 24, 1921 the General Assembly created a commission to "investigate the elimination from streams of all substances and materials polluting the same, and report to the next session of the general assembly its recommendations for the purpose of rendering streams free from all polluting matters."⁸ Some of the recommendations of this commission were followed when the General Assembly on May 27, 1925 passed an Act concerning the pollution of water in the State of Connecticut and creating the State Water Commission, which consisted of three members appointed by the Governor.⁹ By this action the State of Connecticut became the third state in the Union to adopt water pollution control laws.¹⁰

Since the State Water Commission was the forerunner of our present Water Resources Commission, there is some justification for selecting this action of the Connecticut Legislature as the starting point for comprehensive administrative regulation of the State's water resources. Prior to 1925, the Department of Health was the only State agency involved in pollution control, and its scope at that time involved the supervision of only municipal sewage waste. Upon creation of the State Water Commission in 1925, the legislature neglected to repeal the statutory authority of the Health Department in the pollution control area. Consequently, as noted before, the statutes result in overlapping in this area between the Department of Health and the Commission.

5. Conn. Pub. Acts (1886) Ch. 66.

6. Conn. House Joint Resolution No. 4 (1897).

7. Report of the State Sewage Commission (1899).

8. Conn. Pub. Acts (1921) Ch. 305.

9. Conn. Pub. Acts (1925) Ch. 143.

10. Preceded only by Rhode Island and Penn.

According to the legislation which established it, the major objectives of the State Water Commission were (1) to evaluate the State pollution problem so as to set up a reasonable and logical control program and (2) since it was so early in the pollution control activity, to develop practical methods for treating industrial waste waters. The first biennial report of the State Water Commission charted the course of administrative regulation in this area when it stated:

two possible courses of procedure were open to the Commission in attempting to carry out the intent of the law: 1. To rely on the authority conferred upon the Commission by law, and after proper investigation to issue the necessary orders to secure elimination of specific causes of pollution. 2. To attempt by education and personal conference to develop a sentiment calling for correction, and by assistance to and co-operation with both industry and communities, aid in bringing about the desired results.¹¹

Subsequent events clearly establish that it was the second approach which the Commission used as its primary effort to combat pollution.

The State Water Commission continued its work. On May 22, 1957 the General Assembly of the State of Connecticut established the present Water Resources Commission¹² which was designed to replace three former state agencies, the State Water Commission, the Flood Control and Water Policy Commission, and the State Board of Supervision of Dams, Dikes and Reservoirs. In 1959, the Water Resources Commission was made a sub-agency of the Department of Agriculture and Natural Resources.¹³ In this relationship the Water Resources Commission is autonomous, and only its fiscal and business aspects are under the central department's authority. The Commission is a seven-man body. Its members are appointed by the Governor with the advice and consent of the Senate for a term of four years.¹⁴ The day-to-day operations

of the Commission are conducted by a staff director and a staff of professional employees which, during the period of time of this study, numbered sixteen.¹⁵

The Water Resources Commission has a wide variety of responsibilities and activities. A list of some of their more important programs includes: water pollution control, flood control, development of waterways and harbors, shore erosion control, supervision of dams, inventory of water resources, registration of well drillers, and the sale of water by public water supply systems. However, the prime and oldest responsibility of the Commission is its pollution control program. This program is designed to abate existing sources of pollution and to control the creation of new sources. For many years this program was structured pursuant to statutory authority found in Sections 25-19 to 25-24 of the State Statutes,¹⁶ and, although it has been changed by the Pollution Control Act of 1967, we must examine the pre-1967 structure for the purpose of understanding the two cases examined in this paper.

With regard to existing sources of pollution, a long negotiation process occurred before abatement could finally be achieved. The staff would usually approach a municipality, firm, or other source of pollution and seek to encourage the adoption of some sort of abatement device, be it a sewer system or sewage treatment plant. Public hearings and a Commission order would be used only as a last resort. If necessary, the Commission would require the polluter to present plans for abatement to the Commission for its approval. Although the negotiation process which was used could be very lengthy, the Commission had apparently felt that towns and firms would respond more effectively if the results were brought about by negotiation rather than by order. With new sources of pollution, a permit was required from the Water Resources Commission before a new source of pollution could be created.¹⁷ At the time these permits

11. First Biennial Report of the State Water Commission, Conn. Pub. Document No. 78 (1926).

12. Conn. Pub. Acts. (1957) No. 364, § 2, 3.

13. Conn. Pub. Acts (1959) No. 637, § 5.

14. Conn. Gen. Stat. (Rev. 1958) § 25-1.

15. As a result of the increased responsibilities and the larger budget provided by the Water Pollution Control Act of 1967, Conn. Pub. Acts (1967, Jan. Session) No. 57, the staff has recently been increased.

16. Conn. Gen. Stat. (Rev. 1958) § 25-19 to 25-24. Repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 36.

17. Conn. Gen. Stat. (Rev. 1958) § 25-23. Repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 36.

were issued, it would appear that public hearings were not usually conducted, but rather the Commission relied on rather informal methods of proceedings.¹⁸ On occasion the Commission had not learned of a new source of pollution until it had actually been constructed and was in operation. In that situation the Commission was empowered to have the Attorney General obtain a temporary injunction until a settlement was reached on the matter of pollution control.¹⁹

No discussion of the pollution control efforts of the Water Resources Commission would be complete without recognizing the intimate interrelationship which exists on pollution control programs between the Water Resources Commission and the State Department of Health. The State Department of Health has three primary areas of responsibility that concern the regulation of water: mosquito control, shellfish contamination, and water quality control. The third category should be further subdivided into: the protection of clean drinking water, and the preservation of healthful bathing. The Department is charged with protecting the public health and acting to remove health hazards. Because of this limitation of objectives, it is not as suited for the role of a comprehensive water regulation agency as is the Water Resources Commission. However, on matters of water quality control, the Department and the Water Resources Commission seek to complement one another in their work. Each of the two agencies operates with a separate objective in a different area of responsibility. The key to the Department's scope of responsibility is the public water supply, and the Department is concerned with water regulations only insofar as the water in question is used for human consumption or bathing. While the working relationship between the Department and the Commission has been a good one, the need for coordination of the two agencies is obvious. The legislature has attempted to deal with this by providing that one of the members of the Water Resources Commission shall be a representative of the State Department of Health.²⁰

The Department's work in the area of water quality control could be subdivided into inspection, control of existing pollution, and supervision of treatment facilities. Inspections relating to water quality are of two types: inspection of treatment facilities and inspection of existing water quality. In regard to the latter type, the Department does take water samples from the three interstate rivers for bacteriological and radiological examination. This is generally done three times a year, but the sampling program has been expanded recently to include the preparation of studies evaluating these waters as future sources of drinking water. In addition, the Department will occasionally inspect other water upon the receipt of complaints regarding its quality. On the subject of pollution abatement, the Department of Health is empowered to order the cessation of both municipal and industrial pollution.²¹ This power is limited, however, by the requirement that the pollution be a public health hazard. Here again, as in the case of the Water Resources Commission, negotiation in pollution abatement is a dominant factor.

The Department of Health's concern with the specification of treatment methods for new sources of pollution has been solely with municipal, not industrial, sources. The subject of industrial waste is a very complex one and generally the Water Resources Commission has had prime responsibility in this area. Indeed, it would seem that, in those rare cases where industrial waste would create a health hazard, the Department of Health apparently relies upon a request to the Water Resources Commission that it give special attention to the problem. Insofar as municipal waste treatment facilities are concerned, the Department and the Commission work together to provide the municipality with recommendations that will meet the standards of those agencies. Both staffs meet to formulate recommendations, and the joint staffs present their recommendations to the municipality.

There is joint responsibility between the Department of Health and the Water Resources Commission on the question of development of munic-

18. See, for example, the issuance of such a permit to the Federal Paper Board Company, Inc., discussed below.

19. For a discussion of the structure of the pollution control program under the 1967 legislation, see page 27 below.

20. Conn. Gen. Stat. (Rev. 1958) § 25-1. At the present time this post is held by David C. Wiggin, Director, Division of Sanitary Engineering, State Department of Health.

21. Conn. Gen. Stat. (Rev. 1958) § 25-27.

ipal sewage treatment facilities. The Department derives direct authority over municipal sewage treatment plants by statute.²²

This direct statutory authority provides an exception to the general rule that the Department is concerned only with the regulation of drinking and bathing water. No showing of a condition harmful to the public health is required before the Department gains jurisdiction over a public sewage treatment plant. In addition the Commission has had power to require a permit for any new or altered source of discharge.²³ This statutory authority, understandably, caused the Commission to be concerned with the establishment of municipal sewage treatment plants. Even though this specific statutory provision has been repealed by the Water Pollution Control Act of 1967, Section 3 of the 1967 legislation grants the Commission continuing authority in this area.

Initial attention to a public sewage treatment facility could arise through one of two methods. First, an order of the Commission²⁴ may be the initiating factor which will make it necessary for the respondent municipality to take steps toward the construction of a treatment plant. In this situation the Department by law will gain an interest in the matter upon the issuance of the order by the Commission. Secondly, if a municipality itself initiates action toward the development of a treatment facility, Department jurisdiction would arise upon notification by the municipality.²⁵ In practice, the consulting engineers of a municipality planning sewage treatment facilities present duplicate plans and specifications to the Department

and to the Commission. The Department has developed a form for use in these situations.²⁶

Upon receipt of the initial plans and applications for approval, the staffs of both agencies confer jointly to discuss the proposed treatment facilities. Minimum standards for approval appear to be uniform for the two agencies and may be found in a publication, "Guides for Sewage Works Design."²⁷ In addition to these published standards each agency apparently has specialized interests which the other acknowledges and supports.

After this joint consultation, the staffs will meet with the municipality's consulting engineers to offer recommendations for a final plan that will meet the approval of the two agencies. The recommendations of each staff will be supported by the other, and their adoption is made a condition of approval by the agencies.

The processing of treatment facility plans proceeds by having preliminary specifications approved first, then plans reflecting agency recommendations, and then the final plans. Tentative approvals are granted throughout the process and are conditioned upon the subsequent adoption of further recommendations. The approvals of the Department as well as those of the Commission contain provisos which generally do not vary. The conditions imposed by the Department are usually: (1) that the treat-system be operated in accordance with the Department's recommendations and under supervision of an operator whose qualifications are approved by the Department; (2) that the municipality enact and enforce any local ordinances necessary to eliminate from the sewage col-

22. Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-26, which provides that the Commissioner of Health "shall examine all existing or proposed public sewage systems . . . and shall compel their operation in a manner which shall protect the public health. . . . No public sewage system or refuse disposal plant shall be built . . . until the plan or design of the same and the method of operation thereof have been filed with said Commissioner. . . ."

23. Conn. Gen. Stat. (Rev. 1958) § 25-23. Repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 36.

24. Pursuant to Conn. Gen. Stat. (Rev. 1958) § 25-21. Repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57 § 36. Now it would be pursuant to Section 3 of the 1967 Legislation.

25. It should be noted that while Conn. Gen. Stat. (Rev. 1958) § 25-23, repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 36, referred to Commission *approval* of plans for sewage treatment plants, Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-26, specifies only that such plans should be *filed* with the Department. This distinction, however, does not seem to have prevented the Department from operating as an agency with approval powers.

26. Connecticut State Department of Health Form S. E. 2 (1-66) 200, Application for Approval of Plans for Public Sewerage Works.

27. Prepared by the Technical Advisory Board of the New England Interstate Water Pollution Control Commission, Boston, Massachusetts. (June, 1962).

lection system any industrial waste that will adversely affect the plant processes and cause damage to the sewers; (3) that no sewage shall be disposed of so as to create a public nuisance; and (4) that whenever required by the Department, the plant shall be modified, enlarged or expanded.

Finally, after construction of a municipal or public sewage treatment system, the Department continues to inspect its operation and to sample the discharge. Staff members have indicated this burden of inspection is an onerous one. In addition, the Department has the responsibility of insuring that treatment plants are operated by competent persons.²⁸ Individuals desiring to qualify as sewage plant operators are required to submit to the Department an application prescribed by the Department.²⁹

Unfortunately, but not surprisingly, municipalities throughout the State have not been overwhelmingly enthusiastic about the Commission's efforts to control pollution.³⁰ In spite of this attitude the Commission has apparently adhered to the policy decision made by its predecessor, the State Water Commission, to attempt to cooperate with industry and communities to aid in bringing

about the elimination of pollution in the waters of this State. And only if this method fails completely, does the Commission resort to the use of formal orders.³¹ This has resulted in a regulatory pattern which contains a minimum of formal administrative orders and only a very few judicial proceedings. Indeed, no formal hearings are required during the process of approval of municipal sewage treatment facilities. The lack of formal procedures and the dearth of written memoranda in the Commission files would seem to indicate that a lot of the bargaining between polluters and State authorities is verbal.

The statutes provide the right of appeal for parties aggrieved by orders of the Commission or the Department.³²

It should be emphasized again that formal orders are rare on the part of the Commission or the Department, and anything approaching a legal controversy seems to be handled by the Commission. Indeed, there have been only two proceedings involving Commission orders directed at pollution control which have been reviewed by the Supreme Court of Errors of the State of Connecticut.³³

28. Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-26.

29. Connecticut State Department of Health Form O-S. E. 31 (12-62) 300, Data to be Submitted by Persons Desiring to Qualify as Sewage Plant Operators.

30. See, for example, O'Sullivan, J. dissenting in *State Water Commission v. Norwich*, 141 Conn. 442 at 449, 107 A. 2d 270 at 274 (1954):

The majority, I fear, have forgotten the history of pollution in this state and the attitude of cities and towns toward measures adopted to terminate it. Because of the financial burden which would follow upon the acceptance of their share of the effort necessary to eliminate their contribution to pollution, municipalities have been not only indifferent but actually antagonistic to the state program. Several of them have used dilatory tactics and placed obstacles in the way in order to avoid cooperating with the state authorities. Indeed, in many instances, the commission has been looked upon as an administrative agency that had to be tolerated but not followed.

31. Prior to 1967, the Commission had issued only 35 formal orders.

32. Conn. Gen. Stat. (Rev. 1958) § 25-22; Conn. Pub. Acts (1967, Jan. Session) § 16. The courts have made it clear that appeals pursuant to these sections are the appropriate way to test the reasonableness of a Commission order and that parties may not test it by raising the question in a judicial enforcement proceeding brought by the Commission pursuant to the statute. 141 Conn. 442 at 447. *State Water Commission v. Norwich*, 141 Conn. 442 at 447, 107 A. 2d 270 at 273 (1954).

33. *State Water Commission v. Norwich*, *Supra.* note 30, and *Derby v. Water Resources Commission*, 148 Conn. 584, 172 A. 2d 907 (1961).

CASE STUDY I: THE ANSONIA - DERBY - SHELTON MUNICIPAL SEWAGE TREATMENT FACILITY

For over 40 years the Water Resources Commission and its predecessor, the State Water Commission, had been engaged in a seemingly never-ending effort to establish sewage treatment facilities for the cities of Ansonia, Derby and Shelton. Ansonia, a city of 20,200 people, is located on the Naugatuck River about three miles upstream from the junction of the Naugatuck and Housatonic Rivers. The cities of Derby and Shelton, located on the Housatonic River at the point of that junction, have populations of 12,600 and 22,700 respectively.³⁴ From the junction the Housatonic River flows into Long Island Sound, passing through the cities of Milford and Stratford.

For many decades these three cities had been discharging raw sewage into the Housatonic and Naugatuck Rivers. Estimates compiled in 1956 indicated that Ansonia, Derby and Shelton were responsible for the three largest volumes of untreated sewage discharged into Connecticut watercourses.³⁵

The discharge of this untreated sewage into the two rivers created a very serious source of pollution affecting water quality in the downstream municipalities as well as in the immediate area of the discharge. Since the towns of Stratford and Milford had both constructed some treatment facilities for their own sewage, the upstream pollution was an even greater source of irritation to the residents of these two towns.³⁶ Unfortunately, rather than remaining stable, the discharge of raw sewage by the three cities, Ansonia, Derby and Shelton, had increased over the years because of a population rise³⁷ coupled with the construction of new sewers.

The history of the Ansonia-Derby-Shelton problem provides an insight into the evolving regulation of the Water Resources Commission and the approaches which it takes toward recalcitrant polluters. Generally, the sequence of events in the three cities was the same throughout the years. Where variations exist, one of the cities has been selected as representative.

For eleven years, during the period from 1927 until 1938, the State Water Commission staff mounted many informal efforts to encourage voluntary construction of treatment facilities in the three cities in question. Many letters were sent to the mayors and other public officials. No indication can be found, however, that these informal efforts were productive of any specific city action toward sewage treatment.

In July 1938, the State Water Commission held its first public hearing in regard to these three cities, and in August of that year issued an order requiring them to study sewage treatment alternatives and to submit preliminary engineers' reports by January 1, 1939. As is typical in administrative proceedings of this type, this order was followed by the first in a long series of requests for time extensions by the cities, and the Commission readily reset its deadline for March 1, 1939. Therefore, it was not until March 15 of that year that the Commission received the first engineer's report which proposed for Ansonia a treatment plant that would cost \$185,000. This report was quickly approved by the Commission.

The next essential steps involved in the construction of a treatment plant called for the cities concerned to engage consulting engineers who

34. The figures given are current population. In the case of Shelton this represents a considerable population increase over the 40-year period covered in this discussion. In 1920 the population of Shelton was only 9,475. The comparable figures for Ansonia and Derby are 17, 643 and 11,238 respectively.

35. Ansonia allegedly discharged an estimated 3.2 million gallons of untreated sewage per day, while Derby and Shelton accounted for another 1.3 and 1.1 million gallons respectively. It is an interesting contrast to note that the next largest volume of untreated sewage discharged into Connecticut waterways was that of Jewett City, and that accounted for only about 400,000 gallons per day.

36. The town of Stratford, however, had constructed only a primary treatment facility and had no secondary treatment plant. In addition, the presence of harmful industrial wastes imposed serious pressures on the town's facility.

37. Note 34 *supra*.

would draft detailed plans and specifications and submit them to the Water Commission for approval. However, from the time of the Commission's approval of the initial reports until recently, a series of events began which established a pattern of delay. Evidently no communications of progress were made to the Commission by the cities concerned, and on December 28, 1940 almost two years after approval of the first report the first Commission inquiries as to the status of the project were made. Apparently it was not until this time that it was discovered that none of the cities had contracted with engineers, and the Commission's urgings to do so were met by further requests for time extension.

In the absence of any signs of progress, the State Water Commission in January 1942 issued its second order requiring the submission of plans and specifications on or before August 1, 1942. Once again, the cities requested an extension of time to provide at least a full year for preparation of plans, and the State Water Commission indicated a willingness to discuss the question of a new schedule. Accordingly, additional hearings were held in April 1942, and at that time the Commission extended the time for compliance until June 1, 1943, so long as the cities displayed some interim progress.

After the 1942 hearing, Commission correspondence to the three cities requesting current status reports received little, if any, response. This apparent inability on the part of the Commission to acquire regular and current information of the progress made by the cities supposedly responding to its orders appears to be an unfortunate characteristic of the pollution control process. In August 1943, two months after the deadline previously set, a letter from the Mayor of Ansonia informed the Commission that consulting engineers had not yet been hired.

In October 1943, the Commission made its first request to the Attorney General of the State of Connecticut to come to its aid. In acting to enforce the Commission orders, the Assistant Attorney General involved began communication with the mayors of the three cities urging them to proceed without delay in hiring engineers and preparing plans. Finally, on December 3, 1943, the Mayor of Ansonia indicated that the Board of Aldermen of his city had authorized the submission of proposals from four consulting engineers to prepare plans. Accompanying this information was a request for an additional three months be-

fore further enforcement action would be taken. Having received some indication of minor progress taken by the city, the Commission, acting in a manner that would be repeated subsequently, consented to a further extension of time. Future years would also show the Commission relaxing its deadlines on the eve of enforcement proceedings after only slight indications of progress on the part of the cities. The State Water Commission set April 15, 1944 as the new date by which plans were to be submitted to it.

In February 1944, the Mayor of Ansonia wrote to the Attorney General of the impending engagement of engineers. The letter indicated "several months" more would be required for the completion of plans. The Attorney General's office, however, remained firm in regard to the April 15 deadline, and pointed out the previous patience on the part of the Water Commission with the City of Ansonia. In March the city took preliminary steps to purchase a site for the sewage treatment plant. Here, as before, the Water Commission seized upon this evidence of some progress and recommended to the Attorney General that further opportunity to proceed be granted the city. On April 28, 1944, the Commission learned by newspaper accounts that the city aldermen were about to engage engineers, and accordingly it decided to deter action for a reasonable time pending this event.

From September 1944 until January 1945 the Water Commission was unsuccessful in its attempts to arrange a conference with city officials, principally because of the mayor's hospitalization. Early in 1945 the Commission began threatening action unless steps were taken. The city had not yet hired engineers; the delaying factor this time was the Ansonia Corporation Counsel's insistence that it was necessary for the city to advertise for bids from consulting engineers.

Finally, on July 31, 1945, the aldermen authorized the employment of a firm to serve as consulting engineers for the project. In line with previous practice, the city's request for an extension until June 1, 1946, for the preparation of plans was granted by the Commission. Once again, evidence of a little progress produced an attitude of leniency on the part of the Water Commission.

The Commission waited and waited for the plans through June 1946. Finally, on September 20, 1946, the plans were submitted. Those plans presented an estimated cost of \$350,000 for the Ansonia plant, which was about \$165,000 over the

1938 estimate. The Commission approved the plans and, recognizing a severe shortage of construction materials, deferred setting a construction date. This apparently was the cause of the delay which persisted until mid-1948.

In July 1948 the Commission's attention was once again directed to the cities and at that time inquiry was addressed to the firm of consulting engineers in regard to their current estimate of the cost of the proposed plant in Ansonia. The estimate reported then of \$450,000 (an increase of \$100,000 in two years) reflected once again rising costs due to inflation. No further steps were taken toward construction, and in February 1949 the Commission again threatened to issue an order. In September of that year summonses were sent to the three cities for another show-cause hearing which was held in Ansonia on October 5, 1949.

At the 1949 hearing a new factor emerged and ultimately served to further postpone progress for sewage treatment. It was at this time that the idea of a tri-city treatment plant for Ansonia, Derby, and Shelton began to gain support. From the outset the Commission appeared to favor a single plant as more economical and effective than three separate ones. The mayors of the three cities involved now actively began to support such a program and called for the creation of an informal tri-city committee to commence a study. Given this indication of increased interest on the part of the cities, the Commission approved the study and allowed the cities a "reasonable time" to work out the program.

Almost immediately after municipal representatives were appointed to the tri-city committee, the program once again became bogged down in delay and procrastination. Two factors were primary causes of the lack of progress. First, the tri-city body was an informal one, not a legislative-created entity like the Mattabasset authority.³⁸ Consequently, the decision-making power of the committee was severely limited, and its action depended upon the initiative of the member cities. Communications by the Water Commission direct-

ly to the tri-city chairman were generally not productive of much progress. The Commission was required to continually prod the three cities to take steps that would permit tri-city action. For example, a problem developed when the Water Commission began to urge the tri-city Committee to employ engineers. It was discovered, after a lapse of time, that the committee lacked the authority to contract for engineers without the prior approval of the three cities. Unfortunately, this prior approval was long delayed. In sum, the initial enthusiasm of the cities toward the joint project quickly leveled off, and the files indicate that the committee members gradually began to despair of any affirmative action on the part of the cities.

A second stumbling block to progress was the Water Commission's limited power to issue orders. The statute at the time was quite different in this respect from the current law. Former Section 25-21, under which the Commission was operating, provided that the Commission had power to issue an order directing "such person, firm or corporation [the polluter] to use or to operate some practicable and reasonably available system . . . [I]f there is more than one such practicable and reasonably available system or means, such order shall give [to the polluter] the right to choose which one of such systems . . . shall be used."³⁹ The statute indicated that a Commission order could specify the type of treatment plant required. It was not clear, however, whether the Commission could direct an order against two or more polluters to engage in a joint effort or whether a joint project having been commenced, Commission orders could directly enforce its progress. It appears as though the Commission had long felt that its order authority was confined to orders directed at individual municipalities to construct separate treatment facilities. This view was confirmed on September 11, 1956, when the Attorney General's office in reply to a Commission inquiry, issued an informal opinion indicating that "under this statute we do not believe that the Water Commission has authority

38. When the communities of New Britain, Berlin and Cromwell decided to move forward on a regional sewerage treatment plant, they proceeded by forming an organization to act on the matter. The General Assembly, at the urging of the communities involved, passed a special act providing for the creation of the Mattabasset District to be composed of representatives from each of the towns. Conn. Spec. Acts (1961) No. 240, amended by Conn. Spec. Acts (1963) No. 134.

39. Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-21, repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 36.

to order two or more towns to combine in any joint sewage disposal system." It was felt that this discretion resided within the legislative body of each city and that such action "must be voluntary on the part of each municipality and cannot be directly ordered by the Water Commission." In the opinion of the Attorney General's office, therefore, the Commission could only issue orders directed to the individual municipalities which would provide the cities with the alternative of joining together in a joint project. The latter course, however, could not be directly enforced.⁴⁰

Accordingly, the Water Commission's position with respect to the tri-city project was far from an ideal one. On the one hand, the joint treatment plant was favored as most efficient. The Commission, however, confronted with the prior reluctance of the cities to take active steps, was forced to decide whether it should pursue the tri-city course or whether it should seek separate facilities by direct enforcement against the cities. The Commission chose the former course and attempted to cope with the delay through negotiation and indirect pressure.

Matters continued to drag through 1950, and the Commission experienced great difficulty in securing progress toward a single plant. Commission pressure on the cities was met by the response that the matter was out of their hands and was now the responsibility of the tri-city committee. On the other hand, progress by the committee was hampered by that body's reliance on city action. Commission attempts to meet with the three mayors were delayed for months because of illnesses and other reasons.

Finally, on July 30, 1951, the Commission issued its third order to the city requiring them to advertise for construction bids for separate plants by September 15, 1951, with construction to be completed by December 31, 1952. Water Commission interest in a single plant, however, was still

present so that, although the order specified construction of separate plants, it permitted the cities an alternative to separate construction if they would produce plans for an effective tri-city facility. Upon the request of the tri-city committeemen, the Commission further extended the deadline for bids to permit additional study of a single plant.

The order and extension, however, did not produce any appreciable progress. Commission inquiries regarding status of the project met with no response until December 1951, when the tri-city committee reported that the engagement of consulting engineers was impending. It was not until September 18, 1952, however, that the engineers, Metcalf and Eddy, were hired by the tri-city committee. Formal approval of the engineering contract by the cities was, seemingly, one factor operating to delay the program at this point. Additional delaying factors during this period were the failure of the cities to appropriate funds for the engineering study and the fact that the tri-city committee was composed of laymen who were serving part-time.⁴¹

The Metcalf and Eddy report on a single treatment plant was not completed until July 1954, when it was submitted to the Commission. The cost at that time for the project was estimated to be \$2.3 million dollars, but this represented considerable savings to the three cities both in terms of initial costs and projected operating costs. The price for a separate plant in Ansonia, however, had grown to \$857,000, more than four times the original estimate in 1939. The Commission approved this tentative plan, but indicated that monthly progress reports would be required. In November 1954, the voters of Ansonia, Derby, and Shelton approved by referendum the construction of a tri-city plant over the alternative of separate plants or no construction at all. City officials, however, took no decisive steps to implement fur-

40. The statute was partially amended by Conn. Pub. Acts (1965, Feb. Session) No. 489, by granting to the Commission the power to require an engineering survey from any person, firm, or municipality "or any combination thereof" causing pollution. By the provisions of the Water Pollution Control Act of 1967 Conn. Pub. Acts (1967, Jan. Session) No. 57, § 7, which is the statutory provision now controlling this matter, the Water Resources Commission is expressly granted the power to "... issue an order to two or more municipalities jointly to provide the facilities necessary to abate the pollution."

41. The impact of this can be realized when it is noted that during three of the months in which the Commission was urging completion of the engineering contract, the chairman of the Committee was out of the country on business.

ther the project. It is fair to say that this was the high point of the tri-city project, and it is unfortunate to realize that delay continued until the Commission, because of its limited order power, enforced the orders for separate facilities in 1956.

As the year 1955 began, no appreciable progress had been made toward sewage treatment since the 1938 orders to the three cities or since the creation of the tri-city idea in 1949. While it is true that the latter project had advanced to the stage at which engineers had been engaged, lack of support by member cities had stalled further development and progress. Because of its inability to issue orders to the joint body, the Water Commission was forced to turn again to the individual cities and began to assert pressure. In July 1955 a two-day hearing was held in which findings were made in regard to the current status of compliance, although no action was taken because of the death of one of the Commissioners. At the urging of counsel for the cities, this hearing, initially an informal one, was conducted in a formal manner with the witnesses being sworn and a full transcript prepared.

At about this time the news media began to discover the controversy and public response began. It is fair to conclude that public opinion in many areas of the State, and particularly in Stratford and Milford, was critical of the Commission and its apparent leniency with the three cities. Letters from private citizens and citizen groups to the Commission, the Governor and Connecticut's U. S. Senators took the Commission to task for its delay and urged immediate action. In July and August 1956 further hearings were held. Since a new Commissioner had been appointed by this time, and with the apparent acquiescence of all of the parties, the testimony of the 1955 hearings was considered along with the evidence developed in the 1956 hearings. The cities at this time began to raise the question which had been left unresolved by the one case in this area which had reached the Supreme Court of Errors.⁴² That question was: Is construction of treatment facilities unreasonable

within the meaning of the statute if it was financially difficult for the cities involved?⁴³

The City of Derby, in support of its assertion that it would be financially unreasonable to compel the city to construct these facilities at this particular time, introduced evidence concerning its educational needs and the drain on its budget from that source. Among other exhibits considered were the city's Grand List, school enrollment figures, breakdown of taxable property, and a certified public accountant's report regarding the city's financial condition. The Water Resource Commission's staff, however, was quick to point out that the city still had a 3% leeway under the Statutory Bond Indebtedness Limitation and that its current tax rate was not relatively high. "Revenue" financing, with payment by the users of a sewer system, was also indicated as a possibility, along with federal loan funds.

As a result of these hearings, separate orders were issued against the cities requiring the construction of three separate treatment facilities. In the case of Ansonia plans and specifications were to be submitted by July 1, 1957, with status reports to be made on specified dates thereafter and completion to be accomplished by 1959.

All three cities appealed to the Superior Court from the Commission's orders. In the cases of Ansonia and Shelton the appeals were dismissed because of their failure to proceed. Derby followed through its appeal, and the Superior Court affirmed the Commission's order. The city thereupon appealed to the Connecticut Supreme Court of Errors.⁴⁴

In the Supreme Court of Errors three contentions were raised by the city:

1. That the order was invalid because the new Commissioner made his decision partly on the basis of the 1955 testimony which he did not hear.
2. That the order was unrealistic in view of the city's financial condition.
3. That compliance was impossible until the Commission set flood encroachment lines along the river.

42. *State Water Commission v. Norwich*, 141 Conn. 442, 107 A.2d 270 (1954).

43. The statute at the time permitted the Commission to order construction of a plant only if ". . . the cost of installation, maintenance and operation thereof shall not be unreasonable or inequitable." Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-21, repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 36.

44. *Derby v. Water Resources Commission*, 148 Conn. 584, 172 A.2d 907 (1961).

The Supreme Court of Errors affirmed the lower court judgment and dismissed all three contentions.

In regard to whether the order was financially reasonable, the court, acknowledging that the estimated cost of the treatment plant would cause the city's bonded indebtedness to exceed the statutory limit,⁴⁵ nevertheless indicated that the excess would not be so great as to be incapable of absorption by increased taxation. The court also took notice of the availability of federal funds. The decision seems to indicate that Sec. 25-21, when referring to "unreasonable or inequitable" cost, does not include a situation in which moderately increased taxation will be necessary to finance construction. In the words of the court, "Public health cannot be endangered because of a reluctance on the part of municipal authorities to face up to a city's problems and find available means of coping with them."⁴⁶ The Supreme Court remanded the case to the Superior Court to fix new compliance dates. On January 26, 1962, the Superior Court set August 1, 1962, as the date for submission of final plans. There was no immediate progress made by the cities even after the Superior Court's orders were issued, and the last stage of judicial enforcement was begun in 1963, when the Water Resources Commission, through the Attorney General, initiated contempt proceedings in the Superior Court.

Orders were issued finding all three cities in contempt of court, and fines of \$10 per day were levied for continued non-compliance.⁴⁷ Apparently the contempt orders accomplished what years of haggling had failed to do, promote actual progress. All three cities submitted new plans and specifications which were approved by October 1964. By the end of 1964 all of the cities had advertised for construction bids and the last city to commence construction did so in June 1965.

The 40-year delay in progress toward sewage treatment for the lower Naugatuck Valley may be attributed to a combination of factors. A perceptible undertone which accentuated all of these factors was a general lack of enthusiasm on the part

of the municipalities for pollution control. There appeared to be an attitude of reluctance on the part of the cities to expend funds and effort for the abatement of pollution when no immediate threat to public health was involved. This attitude provided a framework within which the following factors operated:

(1) There were various external factors which caused delay. Prime among these was the 1955 flood which brought extensive damage to all three of the cities involved. During this period, and immediately thereafter, problems of flood control and prevention eclipsed those of pollution. Another example of an external factor which hindered progress was the shortage of construction materials after the war in 1945. These factors undeniably served to delay the program of sewage treatment. The degree to which these factors were magnified by the general attitude of reluctance on the part of the cities is open to speculation.

(2) The attitude of the Commission played an important role. As noted above, the Commission had been criticized by some as being too lenient with polluters and in particular with the three cities in question. Certainly much of the time lost through delay could have been saved if the Commission had, at an early stage, taken a firm stand in regard to the deadlines that it set and immediately prosecuted enforcement actions against the offenders. On the other hand, the Commission had adhered to the position that the most effective pollution control program is one that is grounded upon voluntary compliance and treatment measures reached by mutual agreement. The Commission attitude was best reflected in its willingness to grant frequent time extensions, usually on the basis of promises of impending compliance or, later, upon notice of only slight indications of progress. Especially in the first decade of the controversy, this willingness seemed to contribute to an atmosphere of relative calm in which a sense of urgency was noticeably lacking.

Although the Commission's views on the role of negotiation partially explains this practice, another factor would seem to be the nature of the

45. Conn. Gen. Stat. (Rev. to 1966) § 7-374 (b).

46. 148 Conn. 584 at 590, 172 A.2d 907 at 910 (1961).

47. In light of the history, it is of interest to note that this action by the Commission was severely criticized in an editorial in the *Ansonia Evening Sentinel*. The Commission's "irascible bureaucrats" were chastised for the "pompous arrogance" indicated by their taking punitive action when "genuine help is needed."

enforcement machinery. A Commission order, it has been seen above, was often ignored by the respondent cities. The next step in the enforcement process, i.e. litigation, involves such serious and ponderous action and sometimes such extended delays that the Commission was usually reluctant to resort to it for all but the most flagrant failures of the cities. Thus, for example, a failure to meet a deadline set for the advertisement for bids would not evoke the response of a suit by the Commission. It was not until 1956, after years of procrastination and evidence of bad faith by the cities, that the Commission resorted to the courts. Presented another way, decades of little or no progress were the cumulative products of numerous and minor failures of the cities to meet the deadlines set by the Commission. Litigation, the only effective means of enforcement, was an inappropriate device to remedy individually these seemingly small incidents.

(3) The Commission's interest in a single tri-city treatment plant was another factor that ultimately served to delay the attainment of treatment facilities. The Commission's preference for the tri-city treatment plant was based on its belief that a single facility would clearly be more economical and its policy of promoting the fewest number of treatment facilities necessary to solve the pollution problems in the State. While in part this interest involved changing horses in mid-stream (with the attendant setback in time schedules), the real cause for lack of achievement in this area can be found in the Commission's limited order power.⁴⁸ If the Commission had been able to issue an order directly to the tri-city committee or, alternatively, to the three cities, to proceed on the joint effort, the single plant may well have become a reality. Instead, the Commission was only able indirectly to guide action toward this end by exerting pressures on the cities by threats to enforce the orders for separate plants. In the ab-

sence of real enthusiasm on the part of the cities for the joint project, the Commission enforcement effort remained hampered by the inability to deal in a direct manner.

In addition, the tri-city committee was itself ill-suited for its task. It was, as mentioned above, an informal body having no existence as a legally created entity. Decision-making power and initiative still rested in the cities which, at the same time, used the joint body as evidence of their good faith and actual progress. Finally, the fact that the committee was composed of only laymen also served to hamper negotiations between it and the Commission.

(4) The evident lack of communication between the Water Commission and the cities in regard to their current status or progress was an important factor. An effective enforcement program would seem to require a free and frequent flow of communication between the Commission and its respondents in regard to the status of the latter's compliance. In the case at hand, months would elapse with no word being received by the Commission as to whether a city intended to or had met one of the deadlines set by the Commission. The Commission did not seem to have followed the practice of sending staff members into the field to ascertain whether or not progress had, in fact, been made. Instead, it relied upon communication of other sorts, and in at least two instances it discovered current status through newspaper reports.

Toward the end of the controversy the Commission attempted to remedy this defect by requiring monthly progress reports from the cities. However, even under this system, communication broke down and the Commission went for months without the necessary information. Certainly the Commission cannot commence litigation each time a city fails to report, and the issuance of orders upon these events would seem to be equally impracticable.

48. This has now been clarified by statute. See note 40 *supra*.

CASE STUDY II: INDUSTRIAL WASTE POLLUTION: THE FEDERAL PAPER BOARD COMPANY

In the area of water pollution, the Water Resources Commission has joint responsibility with the Department of Health on questions of municipal sewage treatment. An equally important responsibility of the Commission in the area of water pollution is the task of dealing with industrial waste discharge into the streams and rivers of Connecticut. One of the more interesting and troublesome cases in this area has been the industrial waste discharge into the Little and Shetucket Rivers by the Federal Paper Board Company, Inc. The Federal Paper Board Company in Versailles has long contributed pollution to the Little River, which is a tributary of the Shetucket River. This problem dates back to the 1930's, but the first record in the Commission files of attention to the problem is January 1947, when the then Director of the State Water Commission, Richard Martin, wrote to the company enclosing a report concerning the excessive pollution of the Little River. After this initial thrust to the company by the Commission there was a series of informal communications and conferences between the Commission and the company which took place over a period of more than two years. During this time, the Commission continued to prod the company to install some type of industrial waste purification system, and the company continued to give assurances that they were studying the problem and that something would be done. In April 1948 the Director of the State Water Commission informed the company that, since informal methods of dealing with the problem had not produced results, he was submitting the matter to the Commission at its meeting of May 3, 1948. This brought an immediate response from an official of the company, who indicated in a letter to Director Martin that he was "surprised and disappointed" at the Director's intention of calling this to the attention of the Commission for formal action since he felt that the company was making substantial progress toward purification of industrial waste. He pointed out that at the Versailles plant his company had expended over \$71,000 for waste clarification system and that a further expenditure of over \$160,000 was anticipated by the company to further refine their filtration system. With an admirable

display of resolve, Director Martin's response was that a formal hearing could possibly be avoided if a definite schedule for completion of the system could be worked out.

On May 3, 1948, the Commission voted to hold a public hearing on June 7, 1948, to determine whether or not an order should be issued to the Federal Paper Board Company pursuant to the appropriate sections of the statute. Director Martin, in a letter to the company dated May 3, 1948, indicated that the citation for the public hearing would have to be issued twelve days before the hearing and, therefore, if the company wanted to talk informally (as they had indicated in their earlier communication), they would have to do so before May 21. The company immediately responded that they wanted to talk and deal with this on an informal basis. As a result of conferences which took place between May 4 and May 12, the parties involved reached a "definite agreement" which was reduced to writing in a letter from the company to Director Martin. On the basis of this agreement, the Director, on May 20, 1948, informed the Commission that the staff had worked out a plan with the company and that a public hearing would not be necessary. From the correspondence between the company and the Commission in the weeks following this decision not to hold a public hearing, it would appear the Commission was led to believe that the entire system would be completed on or about January 1, 1949.

During the latter half of 1948, the company and the Commission staff continued their efforts to bring about a completion of the pollution treatment facility. Throughout the winter of 1948 and 1949, Commission records indicate that the Commission staff was working closely with company officials. The company was encouraged to complete the facility so it would be in operation before the summer of 1949. This was not realized, and the Commission received many complaints about the intolerable conditions of the Little and Shetucket Rivers throughout the spring and summer of 1949. In September 1949 a staff member from the Commission made an inspection of the plant. He reported that the facility was nearing completion and hopefully would be in operation by the

end of September. This planned facility went into operation, but the unsatisfactory condition of the river continued. So did the complaints. Finally, on September 28, 1953, a staff member asserted that the pond below the plant was in "deplorable" condition and suggested that the company be urged to install further units. This precipitated a repeat of the pattern we have seen frequently in administrative procedures in this field, i.e. further informal conferences and communication with the company.

The Commission was in an uncomfortable position at this point. In spite of the fact that it had been working with the company for almost a decade to develop better conditions along the river and that the company had expended considerable sums of money,⁴⁹ the river was still in an unacceptable condition.

The Commission's informal handling of this problem continued, and on October 25, 1956, the Director of the Commission wrote to the company indicating that the problem was not substantially improved and that the system in operation was turning out inferior effluent because of excessive load. He requested that the company immediately advise the Commission on the steps they planned to take to correct this problem. The company replied that they were continuing to work on the problem and were attempting to remedy it. Finally, in August 1957, a staff report of the State Water Commission indicated that both the complaints and the unsatisfactory condition of the rivers had continued, and the report reached the conclusion that there was "no good reason for further delay." A copy of this report was sent to the company, and they were again urged to remedy the matter.

From August of 1957 through 1958, 1959, and 1960, the conferences and exchange of letters between the Commission and the company continued. There was, however, a very significant turn of events. Sometime during this period the company determined to expand their operations, and this led to an increase in the amount of effluents going into the waterway. In anticipation of this

fact, in April 1961 the company filed an application with the Water Resources Commission for a permit for the regulation of a new source of pollution.⁵⁰ This was filed pursuant to Sec. 25-23⁵¹ of the State Statutes which provides that no one may create a new source of pollution, that is, one not existing on June 23, 1925, unless he has obtained a permit from the Commission authorizing such a new source of pollution. This application must have been preceded by informal discussion between the company and the Commission officials, because four days after it was filed, the Director of the Commission wrote to the company giving tentative approval of the application until the Commission met again on May 1. This was followed by a communication to the company from the Director of the Commission dated May 5, 1961, indicating that the Commission had voted general approval of the new source of pollution but would require the submission of detailed plans for treatment of wastes when available. Following the submission of the plans and a review of them by the Commission, which took place throughout 1961, the Commission, on July 12, 1962, formally issued a permit to the Federal Paper Board Company permitting a new source of pollution. In a letter informing the company of the Commission action, Director Wise, after indicating that the letter could be considered as a permit pursuant to Section 25-23 of the Connecticut General Statutes, stated that the approval would be subject to two conditions: (1) that the treatment facility would be properly operated and maintained, and (2) that, should future conditions warrant, the treatment system would be modified, enlarged and/or extended. It has, of course, been very clear that the statutory scheme for control of pollution of the waters in this State has, for many decades, been built on the foundation of reducing and eliminating existing sources of pollution and controlling new sources of pollution. In 1962, the Commission, after fifteen years of frustrated effort in attempting to reduce the problems of pollution along the Little and Shetucket Rivers, issued a permit for a new source of pollution in the same waterways

49. In a letter to the Water Resources Commission dated October 5, 1949, a company official indicated that to date the company had spent approximately \$149,000 on the treatment facility and expected to spend at least another \$5,000.

50. Filed on Water Resources Commission Form P-11.

51. Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-23, repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 36.

to the same polluter. If that does not seem startling enough, we should also consider that there is nothing in the files of the Commission to indicate that there was a formal, public hearing which preceded the grant of permission for the new source of pollution. The statutory requirements were deemed to be met by the "investigation" the staff had conducted over the many months which preceded the Commission action. During this time the staff and the company were discussing appropriate methods of treatment for the increased effluents.⁵² Perhaps this is part of the reason that there is so little in writing in the Commission files to indicate the basis for the Commission action.

However, this is too important a point to pass over without at least trying to determine what motivated the action. Why did the Water Resources Commission determine that the granting of this permit for a new source of pollution was in the public interest? Obviously it was not because they believed additional pollution of these waterways was desirable. It must be remembered that this action on the part of the Commission had been preceded by at least fifteen years of frustrating efforts to ease the problems of pollution along the Little and Shetucket Rivers. Probably the Commission acted on the hope that the additional treatment facilities which it could exact from the company through the negotiations surrounding this application would, over the long run, *decrease* the pollution of the waterways in question. If this is so, it is an inverse method of attacking the problem, but perhaps it has been effective in some situations. Unfortunately, subsequent events indicate that it was not effective in this situation.

Then, also, we cannot overlook the possibility that another factor leading to the Commission's

action is the coldly practical one of economics. Here is an industry which has a definite financial impact in this state from the standpoint of products, tax income and employment. Some support for this view is found in the Commission Director's response, dated July 10, 1963, to a letter from State Representative Eva Harris concerning the pollution situation in the two rivers discussed here. In his letter Director Wise pointed out to the State Legislator that the plant employs between 300 and 400 Connecticut residents. Did the Commission have an understandable sensitivity to the economic consequences of a decision which might cause this plant to curtail or cease its operations in this State?

After the Commission action of July 1962, granting permission to the company for a new source of pollution, the Commission continued to receive letters of complaint concerning the condition of the Little and Shetucket Rivers. Indeed, by 1963 the problem had become one of considerable impact. In a document dated August 6, 1963, the Principal Sanitary Engineer for the Commission made a written report of the pollution in these rivers. He reviewed the steps which had been taken by the Federal Paper Board Company to reduce the pollution,⁵³ and indicated that, while a little improvement had occurred, the condition had been aggravated when the company put into operation a new high-speed board mill a short distance from the old plant. Company efforts to operate this plant so as to protect the stream from pollution had met with all kinds of difficulties, mechanical and otherwise, which had not been solved. This resulted in a large amount of paper stock escaping into the stream and making the pollution situation the worst it had ever been. By this time there was a "heavy blanket of scum" across the surface of the

52. Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-23, repealed by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 36 provided: "The Commission, *after hearing and investigation* upon such application for a new source of pollution, may issue such permit or such order relating to such pollution as it finds will best serve the public interest." (Emphasis added).

53. His report, for example, stated:

Adequate systems were installed to handle the sanitary sewage and changes were made in the board mill to reduce the value of industrial waste being discharged. Installation of high pressure showers, repiping and reuse of water proved helpful. Lagoons were constructed on the far side of the river to handle the wastes from the dewaxing process. Two Oliver vacuum filters were installed at considerable expense, but after several years were discarded. At the insistence of this Commission, a large settling tank, similar to a Marx conical save-all, was constructed and placed in operation. Two such tanks were recommended, but the company felt that flows could be reduced to such an extent that one tank would suffice.

water and the odor emanating from the water was described variously as a "pig-pen" type and the type "often associated with putrefaction or decomposition." However, the report did conclude on this serious, but optimistic note: "The company officials assured the writer that this problem would be given prompt and earnest attention. This is imperative, for the situation is of the utmost gravity. This matter will be given further attention and the company will be urged to push forward as rapidly as possible in correcting this problem and thus eliminating an intolerable condition."

The problem continued⁵⁴ and on October 25, 1963, the company was informed that the Commission, at its meeting on October 21, had discussed the problem. In what sounded like a new "get-tough" policy, the Commission directed the company to submit plans and specifications for corrective measures by December 31, 1963, and to complete the necessary treatment facilities by May 1, 1964. However, this "new policy" was followed by "old methods." Further conferences between the company and the Commission were held. The Commission was advised at its meeting on November 18, 1963 that the company had employed an engineer to study the problem and that a preliminary report from the engineer would be submitted to the Commission at its December meeting. On December 16, 1963, the Commission was advised that the problem could not be corrected without the installation of secondary treatment processes and that a preliminary plan for the type and method of treatment would be submitted to them by January 15, 1964. Such a plan was submitted by the company's consulting engineers, and at the Commission meeting of January 20, 1964, the matter was reviewed. The Commission voted to approve the program as set forth with the provision that immediate steps be taken to implement the plan. Throughout the first half of 1964 the company carried forth its plans for secondary treatment and kept the Commission informed as to its progress. The plans were finally approved by the Commission on June 15, 1964, and the company completed the installation of the necessary equipment.

Unhappily for the company and the Commission, the condition did not substantially improve

and the complaints from citizens and public officials continued unabated. In June 1965 the Commission received a communication from the Governor's office seeking information about the pollution problem in the Little and Shetucket Rivers. A second staff report was prepared. After conceding that there was a problem, the report pointed out that two approaches were available to correct the situation. The first would have been a court injunction to close down the paper mill and thereby eliminate the source of the offending materials to the stream. The second approach, and the one adopted, involved a request to the mill officials to obtain competent technical assistance and to adopt adequate methods of handling the waste. As already noted, the attempts by the company and the Commission staff to remedy the problem had been thwarted by a number of events, among which were the opening of the new mill, known as the Sprague Mill, the introduction of a new high-speed machine of "revolutionary design," and the reduction in the flow of the streams involved by the drought conditions which existed in the state in the early 1960's. The report concluded on this hopeful note:

As stated above, the ultimate goal has not been reached. The State Water Resources Commission and the Federal Paper Board Company both realize that the problem has not been solved. It is believed that much progress has been made but the fact is also recognized that there remains much to be done. It is the intention of both parties to pursue this matter diligently and conscientiously until the situation is resolved to the satisfaction of all concerned. This calls for patience, cooperation and understanding on the part of all affected. As stated in the first paragraph of this report, the only alternative is to close the mills. This hardly seems to be in the best interests of all the citizens of the several towns which are intimately connected with or affected by the problem.

Once again history repeated itself, and both the problem, the complaints, and the informal conferences between the company and the Commission staff continued. On May 3, 1966 the Principal Engineer of the Commission submitted yet

54. There are newspaper accounts during July 1963 reporting a large fish kill in the Shetucket River. Asserting that the pollution problem discussed here was responsible for the kill is speculation, but very reasonable speculation.

another report on the Federal Paper Board Company, Inc. It reviewed the extensive history of the problem⁵⁵ and reached a conclusion that was not new:

. . . [I]t is not claimed by anyone that this problem has been completely or permanently solved. There is still much to do and much more will be done as rapidly as possible. It is anticipated that practical improvements will be made almost continuously and new treatment methods adopted if found to be effective. One thing should be borne in mind and that is that the treatment facilities installed in Versailles by the Federal Paper Board Company is one of the most complete systems installed by any board mill of comparable size.

In spite of the cautiously optimistic tone of the May 1966 report, conditions in the Little and Shetucket Rivers continued to deteriorate, and the culmination of a number of seasons of drought-like weather greatly aggravated the problem. Finally, in June 1966 the Commission issued a citation for the company officials to appear before the Commission to discuss once again the problem. A show-cause hearing was held before the Commission on July 18, 1966. The company reviewed all its efforts to improve the problem and assured the

Commission that they were rapidly approaching a solution. The Commission, therefore, voted to continue the hearing until October 1966, in order to give the company officials and the Commission staff an opportunity to collect data and set criteria for pollution in the stream. The hearing was reconvened at the October 17, 1966 meeting of the Commission; a report of the results of the data gathering was given to the Commission; a presentation of the company's continuing efforts was made by company officials; and the Commission took no action.

It is clear that, as the third decade of handling this matter was entered in 1967, the Commission had not yet been successful in eliminating or controlling this major source of pollution of the Little and Shetucket Rivers. The two decades of wrestling with this problem had produced: one Show-Cause Order, one permit for a new source of pollution, a dozen or more formal discussions at Commission meetings, countless written and oral complaints from both citizens and public officials, and an untold number of man-hours in discussions and conferences between the Commission staff and company officials. It seems fair to suggest that there was a reasonable prospect of more of this type of "progress"; however, the Water Pollution Control Act of 1967 intervened.

55. Because it does provide a capsulized history of this problem and also provides information concerning the methods employed by the company to attempt to remedy the pollution situation, the report is reproduced at the end of this article as Appendix B.

A NEW ERA IN ADMINISTRATIVE REGULATION OF WATER RESOURCES IN CONNECTICUT: THE WATER POLLUTION CONTROL ACT OF 1967

The administrative regulation of Connecticut's water resources took a significant turn in 1967. In January 1967 Representative Peter Crombie of the 44th District⁵⁶ introduced House Bill No. 2417, which had the stated purpose of implementing the recommendation of the Clean Water Task Force Report. The Clean Water Task Force had been formed in October 1965 by Governor John Dempsey to ". . . examine the pollution problem that we know exists and tell us the best, quickest, and most efficient and economical way to eliminate it." This hundred-citizen Task Force issued its report in mid-May 1966. The report reproduced the reports of the ten Subcommittees of the Task Force and also included the all-important Action Program of the Task Force.⁵⁷ The Action Program was the genesis for House Bill No. 2417, which ultimately resulted in Public Act 57, approved on May 1, 1967. This major piece of regulatory legislation will inevitably have a great influence on the direction of the control of water pollution in this State. Perhaps the most significant provision of the new law is the grant of authority to the Water Resources Commission to issue orders directing the abatement of pollution.⁵⁸ These orders may be issued by the Commission without formal hearing,⁵⁹ and the alleged polluters are granted the right to request a hearing before the Commission seeking to have the order revised or modified. Such a hearing is made a condition precedent to the taking

of a judicial appeal by the party aggrieved.⁶⁰ An appeal from the final determination of the Commission may be filed in the Superior Court for Hartford County.⁶¹

These sections of the new law mark a very significant shift in emphasis in the regulatory pattern. In the past the Commission was first required to hold a hearing to show cause why it should not issue an order regulating the alleged pollution.⁶² Then, and only then, could it issue an order directing that steps be taken to abate the pollution, and such an order could not be issued if the steps specified were "unreasonable or inequitable."⁶³ Prior to May 1, 1967, the Commission not only had the burden of prescribing the specific method of waste treatment but also had the burden of establishing that its suggested plan was reasonable and equitable. Since May 1, 1967, the alleged polluter has the burden of establishing that the order directing the abatement of pollution should be revised and modified. This has substantially strengthened the hand of the Commission in dealing with the problem of water pollution in this State.

The new law also provides a stronger enforcement mechanism. The Attorney General, at the request of the Commission, can bring an action to enjoin pollution and to compel compliance with orders of the Commission.⁶⁴ In addition, the court may impose a fine, not to exceed one thousand

56. Representing the town of Enfield.

57. Because of its relevance to the conclusions in this paper, the Action Program of the Clean Water Task Force is included at the end of this article as Appendix C.

58. Conn. Pub. Acts (1967, Jan. Session) No. 57, § 7, authorizes the Commission to issue orders to municipalities; § 8 authorizes the issuance of orders to abate pollution existing prior to the effective date of the Act; and § 10 authorizes the issuance of orders to abate pollution caused by sources of discharge occurring as a result of previous orders, permits or directives of the Commission.

59. During the first year of operations under the new Act, the Water Resources Commission had issued over 700 such orders.

60. Conn. Pub. Acts (1967, Jan. Session) No. 57, § 15.

61. Conn. Pub. Acts (1967, Jan. Session) No. 57, § 16.

62. Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-20, repealed by Conn. Pub. Acts (1967, Jan. Session) § 36.

63. Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-21, repealed by Conn. Pub. Acts (1967, Jan. Session) § 36.

64. Conn. Pub. Acts (1967, Jan. Session) No. 57, § 14.

dollars, for each "knowing" violation of any provision of the act. For purposes of this provision, each violation is a separate offense and, in the case of a continuing violation, each day's continuance is deemed a separate offense.⁶⁵

The new legislation also contains provisions affecting the financial aspects of pollution control. The Commission may make grants to municipalities of thirty percent of the cost of constructing, rebuilding, expanding or acquiring pollution abatement facilities.⁶⁶ These grants would be in addition to the grants available to the municipality from the federal government.⁶⁷ In addition to these available grants, numerous tax advantages are provided for pollution control facilities.⁶⁸

This 1967 legislation has had a direct impact on the Federal Paper Board Company, Inc., case. On July 17, 1967, the Water Resources Commission issued Order No. 174 directing the Federal Paper Board Company to "take such action as is necessary to: (1) Provide chemical treatment in primary system; (2) Provide emergency overflow tank at Sprague Mill; (3) Provide standby pump at Versailles Mill; (4) Report on process controls to improve treatment; and (5) Provide National Council for Stream Improvement Report." In addition, a time schedule was set which directed that the above items be accomplished by dates varying from November 30, 1967, to December 31, 1968.⁶⁹ It is encouraging to report that to date,⁷⁰ the company

has met every deadline set by the Commission's order.

Apparently most parties concerned with the Federal Paper Board pollution problem recognize that the existing order, even as modified, will not completely solve the problem. However, work on the problem is continuing, and, hopefully, a solution is not too far in the future. The Town of Sprague is currently studying the question of a municipal sewage system, and there is some thought that a joint undertaking for the development of a pollution control facility by the municipality and the company may be feasible. If this develops as a viable solution, perhaps the Commission may be faced with a problem similar to the one troubling it in the Ansonia - Derby - Shelton matter discussed previously - that is, the ability of the Commission to issue orders directing two or more parties to proceed with the development of pollution control facilities. Although the precise difficulty encountered by the Commission in directing two or more municipalities to work together appears to have been remedied by Section 7 of the Act,⁷¹ the question of whether or not the Commission could issue an order jointly to a municipality and an industrial polluter, is not specifically covered by the new legislation. In light of the posture taken in 1956,⁷² there might be some doubt about the Commission's ability to issue such a joint order.

65. Conn. Pub. Acts (1967, Jan. Session) No. 57, § 17.

66. Conn. Pub. Acts (1967, Jan. Session) No. 57, § 18.

67. Federal Water Pollution Control Act Amendments of 1961, 33 U.S.C. §§ 466-466j.

68. Conn. Pub. Acts (1967, Jan. Session) No. 57, §§ 27-32.

69. As a result of a conference between the Commission and the company held at the request of the company on October 16, 1967, the Commission, pursuant to Section 15 of the Act, modified its earlier order by changing the time schedule set, but no due date was postponed beyond December 31, 1968.

70. September, 1968.

71. Conn. Pub. Acts (1967, Jan. Session) No. 57, § 7: "If a community pollution problem exists. . . , the commission shall, after giving due regard to regional factors, determine which municipality shall be ordered to abate the pollution or shall, after giving due regard to regional factors, issue an order to two or more municipalities jointly to provide the facilities necessary to abate the pollution."

72. See page 32 below.

CONCLUSION

What, then, can be said concerning the administrative regulation of water resources in this State? There are a few observations which should be very apparent. When we consider the area of water resources generally, it should be noted that there are at least eighteen state agencies and bodies with some responsibilities and interest.⁷³ In addition, the state is a member of ten interstate commissions with some responsibilities for the water resources of the region concerned.⁷⁴ When the major area examined in this paper is considered, that is, pollution control, it must be noted that there are two major administrative agencies with joint responsibility and authority. The State has been fortunate in that, through the years, there has generally been an excellent working relationship between the staffs of the Department of Health and the Water Resources Commission. But it should also be apparent that this could change, and the results of friction between these two agencies could be disastrous. It must also be emphasized that over the years, progress has been made in the centralization of responsibilities. The creation of the Water Resources Commission in 1959 was certainly a step in the right direction.

Perhaps even more important than consolidation and unification of responsibility is the need for aggressive, but fair, administrative regulation. This requires making a number of simultaneous changes, most of which are intimately connected with the principal administrative agency involved, the Water Resources Commission. Without attempting to assign any order of importance or priority, changes would be as follows:

The most fundamental change, but also one

which could have dramatic impact, would be a change in Connecticut's concept of the "layman" Commission. The Water Resources Commission, like many of this State's administrative bodies, is composed of nonsalaried citizens. These men usually have other positions of responsibility and accept appointment to the Commission as a civic responsibility. Their duties as commissioners of our State administrative bodies thus are added on to their careers and responsibilities. In the case of the Water Resources Commission, for example, the Commissioners attend the regular monthly Commission meeting. In addition, they preside at public hearings and devote countless other hours to Commission affairs. They, out of necessity, must rely very heavily on their paid staff of employees, presently numbering about twenty. If efforts to eliminate the pollution of our State's waters is important enough to justify the issuance of State bonds in an aggregate amount of up to one hundred fifty million dollars,⁷⁵ perhaps there is justification for having the agency involved supervised by paid commissioners who would be giving their full-time services to the direction of administrative regulation in this field.

Closely related to this matter of full-time commissioners, is the necessity for a competent and dedicated staff. For many years the Water Resources Commission has been attempting to wrestle a gigantic task with a skeleton staff. With the increased public attention, and just as important, the increased funds, perhaps the Commission will be able to gather the staff necessary to accomplish the goals set forth in the Water Pollution Control Act of 1967. The precise direction and form which

73. Department of Agriculture and Natural Resources; Board of Agriculture; State Park and Forest Commission; Board of Fisheries and Game; Shellfish Commission; State Geological and Natural History Survey Commission; Boating Safety Commission; Water Resources Commission; Board of Pesticide Control; State Department of Health; Connecticut Development Commission; Connecticut Highway Department; Connecticut Agricultural Experiment Station; College of Agriculture, The University of Connecticut; Public Utilities Commission; Department of Public Works; Weather Control Board; and the Legislative Council.

74. Commission on Intergovernmental Cooperation, New England Interstate Water Pollution Control Commission; Northeastern Interstate Forest Fire Protection Commission; Interstate Sanitation Commission; Connecticut River Valley Flood Control Commission; Thames River Valley Flood Control Commission; Atlantic States Marine Fisheries; Northeastern Resources Commission; New England Regional River Basin Commission; and the Tri-State Transportation Commission.

75. Conn. Pub. Acts (1967, Jan. Session) No. 57, § 25.

a staff increase will take is, a matter of internal decision for the Commission. However, the Clean Water Task Force made one very helpful recommendation along these lines, and it relates directly to the problem of layman commissioners discussed above. The Task Force recommended: "Authorization for the State Water Resources Commission to appoint hearing examiners to conduct public hearings on matters before the Commission relative to pollution or otherwise, and make findings of fact to the Commission for its decisions. (Comment: the nonsalaried Commissioners should not have to take from their daily schedules as many hours as will be required under the proposed program.)" Responding to this recommendation, the 1967 General Assembly amended Section 25-3a of the General Statutes⁷⁶ to provide that hearings could be held by the Commission, a subcommittee of not fewer than three members of the Commission, or a member of the Commission or its staff designated to act as a hearing examiner. This can undoubtedly be used to very good advantage by the Commission.

Attention to the problems of staffing at the top level, i.e. Commissioners, is only part of the total

picture. The Commission can only function effectively if it has a competent staff of sufficient size. This requires both adequate salaries and a good recruiting program. Hopefully, with the additional funds and the increased public attention being given to water pollution control, this matter will improve.

Finally, history and experience would seem to indicate that the Commission must take a more aggressive stance toward the entire problem. The two cases examined in this paper amply demonstrate the ease with which proceedings can be delayed for decades. It must be conceded that the Commission has been limited by the size of its staff and limited statutory authority, but hopefully both have been remedied by the action of the 1967 General Assembly. It is clear that the stronger legislation provided last year will not solve a thing if it is not followed by aggressive regulation. The Commission and its staff must continue to press forward with vigor in the campaign to eliminate pollution. This will, of course, bring cries of anguish from some quarters, but it will bring about a goal which is of vital importance to the State of Connecticut.

76. Conn. Gen. Stat. (Rev. 1958, Supp. 1965) § 25-3a, amended by Conn. Pub. Acts (1967, Jan. Session) No. 57, § 33.

APPENDIX A

SUBSTITUTE FOR HOUSE BILL NO. 2417.

PUBLIC ACT NO. 57

WASHINGTON WATER
RESEARCH CENTER LIBRARY

AN ACT CONCERNING THE ELIMINATION OF POLLUTION OF THE WATERS OF THE STATE

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. It is found and declared that the pollution of the waters of the state is inimical to the public health, safety and welfare of the inhabitants of the state, is a public nuisance and is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and that the use of public funds and the granting of tax exemptions for the purpose of controlling and eliminating such pollution is a public use and purpose for which public monies may be expended and tax exemptions granted, and the necessity and public interest for the enactment of this act and the elimination of pollution is hereby declared as a matter of legislative determination.

SEC. 2. As used in this act: "Commission" means the water resources commission; "waters" means all tidal waters, harbors, estuaries, rivers, brooks, watercourses, waterways, wells, springs, lakes, ponds, marshes, drainage systems, and all other surface or underground streams, bodies or accumulations of water, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof; "wastes" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the waters of the state; "pollution" means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any wastes or other material discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters; "rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any of the waters of the state, including, but not limited to, change in odor, color, turbidity or taste; "harmful thermal effect" means any significant change in the temperature of any waters resulting from a discharge therein, the magnitude of which temperature change does or is likely to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life; "person" means any individual, partnership, association, firm, corporation or other entity, except a municipality, and includes any officer or governing or managing body of any partnership, association, firm or corporation; "community pollution problem" means the existence of pollution which, in the sole discretion of the commission, can best be abated by the action of a municipality; "municipality" means any metropolitan district, town, consolidated town and city, consolidated town and borough, city, borough, village, fire and sewer district, sewer district and each municipal organization having authority to levy and collect taxes or make charges for its authorized function; "discharge" means the emission of any water, substance or material into the waters of the state, whether or not such substance causes pollution; "pollution abatement facility" means treatment works which are used in the treatment of waters, including the necessary intercepting sewers, outfall sewers, pumping, power and other equipment, and their appurtenances, and includes any extensions, improvements, remodeling, additions and alterations thereof; "disposal system" means a system for disposing of or eliminating wastes, either by surface or underground methods, and includes sewage systems, pollution abatement facilities, disposal wells and other systems; "federal water pollution control act" means the Federal Water Pollution Control Act, 33 U.S.C. section 466 et seq., including amendments thereto and regulations thereunder; "order to abate pollution" includes an order to abate existing pollution or to prevent reasonably anticipated sources of pollution.

SEC. 3. The commission shall have the following powers and duties: (a) To exercise general supervision of the administration and enforcement of this act; (b) to develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of the state; (c) to advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the purposes of this act; (d) to submit plans for the prevention and control of water pollution and to render reports and accounts to the United States secretary of the interior, the federal water pollution control administration and to any other federal officer or agency on such forms containing such information as the said secretary and the federal water pollution control administration, or any other federal officer or agency, may reasonably require, in order to qualify the state and its municipalities for grants from the United

States government; (e) to encourage, participate in or conduct studies, investigations, research and demonstrations, and collect and disseminate information, relating to water pollution and the causes, prevention, control and abatement thereof; (f) to issue, modify or revoke orders prohibiting or abating pollution of the waters of the state, or requiring the construction, modification, extension or alteration of pollution abatement facilities or any parts thereof, or adopting such other remedial measures as are necessary to prevent, control or abate pollution; (g) to hold such hearings as may be required under the provisions of this act, for which it shall have the power to issue notices by certified mail, administer oaths, take testimony and subpoena witnesses and evidence; (h) to require the submission of plans, specifications and other necessary data for, and inspect the construction of, pollution abatement facilities and disposal systems in connection with the issuance of such permits or approvals as may be required by this act; (i) to issue, continue in effect, revoke, modify or deny permits, under such conditions as it may prescribe, for the discharge of any water, substance or material into the waters of the state, or orders for or approval of the installation, modification or operation of pollution abatement facilities; (j) to require proper maintenance and operation of disposal systems; (k) to exercise all incidental powers necessary to carry out the purposes of this act.

SEC. 4. The commission may require any person or municipality to maintain such records relating to pollution, possible pollution or the operation of pollution abatement facilities as it deems necessary to carry out the provisions of this act. The commission or any authorized representative thereof shall have access to such records, and may examine and copy any such records or memoranda pertaining thereto, or shall be furnished copies of such records on request. Such representative shall have the power to enter upon any public or private property, at reasonable times, to secure such information and the owner, managing agent or occupant of any such property shall permit such entry; provided any information relating to secret processes or methods of manufacture or production ascertained or discovered by the commission or its agents during, or as a result of, any inspection, investigation, hearing or otherwise, shall not be disclosed and shall be kept confidential.

SEC. 5. (a) The commission shall adopt, and may thereafter amend, standards of water quality applicable to the various waters of the state or portions thereof. Such standards shall be consistent with the federal water pollution control act and shall be for the purpose of qualifying the state and its municipalities for available federal grants and for the purpose of providing clear and objective public policy statements of a general program to improve the water resources of the state; provided no standard of water quality adopted shall plan for, encourage or permit any wastes to be discharged into any of the waters of the state without having first received the treatment available and necessary for the elimination of pollution. Such standards of quality shall: (1) Apply to interstate waters or portions thereof within the state; (2) apply to such other waters within the state as the commission may determine is necessary; (3) protect the public health and welfare and promote the economic development of the state; (4) preserve and enhance the quality of the state waters for present and prospective future use for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes and agricultural, industrial and other legitimate uses; (5) be consistent with health standards as established by the state department of health. (b) Prior to adopting, amending or repealing standards of water quality, the commission shall conduct a public hearing. Notice of such hearing specifying the waters for which standards are sought to be adopted, amended or repealed and the time, date, and place of such hearing shall be published at least twice during the thirty-day period preceding the date of the hearing in a newspaper having a general circulation in the area affected and shall be given by certified mail to the chief executive officer of each municipality in such area. Prior to the hearing the commission shall make available to any interested person any information it has as to the water which is the subject of the hearing and the standards under consideration, and shall afford to any interested person the opportunity to submit to the commission any written material. At the hearing, any person shall have the right to make a written or oral presentation. A full transcript or recording of each hearing shall be made and kept available in the commission's files. (c) The commission shall establish the effective date of the adoption, amendment or repeal of standards of water quality. Notice of such adoption, amendment or repeal shall be published in the Connecticut Law Journal upon acceptance thereof by the federal government. (d) The commission shall monitor the quality of the subject waters to demonstrate the results of its program to abate pollution.

SEC. 6. No person or municipality shall cause pollution of any waters of the state or maintain a discharge of any treated or untreated wastes in violation of any provision of this act.

SEC. 7. If the commission finds that any municipality is causing pollution of the waters of the state, or that a community pollution problem exists, or that pollution by a municipality or a community pollution problem can reasonably be anticipated in the future, the commission shall issue to the municipality an order to abate pollution. If a community pollution problem exists in, or if pollution is caused by, a municipality geographically located all or partly within the territorial limits of another municipality, the commission shall, after giving due regard to regional factors, determine which municipality shall be or-

dered to abate the pollution or shall, after giving due regard to regional factors, issue an order to two or more municipalities jointly to provide the facilities necessary to abate the pollution. Such order shall include a time schedule for action by the municipality or municipalities, as the case may be, which may require, but is not limited to, the following steps to be taken by such municipality or municipalities: (a) Submission of an engineering report outlining the problem and recommended solution therefor for approval by the commission; (b) submission of contract plans and specifications for approval by the commission; (c) arrangement of financing; (d) acceptance of state and federal construction grants; (e) advertisement for construction bids; (f) start of construction; (g) placing in operation.

SEC. 8. If the commission finds that any person prior to the effective date of this act has caused pollution of any of the waters of the state, which pollution recurs or continues after said date, the commission shall issue an order to abate pollution to such person. The order shall include a time schedule for the accomplishment of the necessary steps leading to the abatement of the pollution. This section shall not apply to any person who is subject to the provisions of section 9 of this act.

SEC. 9. (a) No person shall, after the effective date of this act, initiate, create or originate any new discharge of water, substance or material into the waters of the state without first obtaining a permit for such discharge from the commission. Application for such permit shall be on a form prescribed by the commission and shall include such information as the commission may therein require.

(b) If, upon receipt of an application for a permit as required in subsection (a), the commission finds that such discharge would not cause pollution of any of the waters of the state, it shall issue a permit for such discharge. If the commission finds that such discharge would cause pollution of any of the waters of the state, it shall require the applicant to submit plans and specifications of a proposed system to treat such discharge. If the commission finds that the proposed system to treat such discharge will protect the waters of the state from pollution, it shall notify the applicant of its approval and, when such applicant has installed such system, in full compliance with the approval thereof, the commission shall issue a permit for such discharge. If the commission finds that the proposed system to treat such discharge does not protect the waters of the state from pollution, it shall promptly notify the applicant that its application is denied and the reasons therefor. If any applicant, after having submitted plans and specifications pursuant to the provisions of this section for a proposed system to treat such discharge, is denied a permit by the commission, such applicant shall have the right to a hearing and an appeal therefrom in the same manner as provided for in sections 15 and 16 of this act.

(c) The permits issued pursuant to this section shall be for a period of five years, except that any such permit shall be subject to the provisions of section 10 of this act. Such permit: (1) Shall specify the manner, nature and volume of discharge; (2) shall require proper operation and maintenance of any pollution abatement facility required by such permit; (3) may be renewable for like periods in accordance with procedures and requirements established by the commission; and (4) shall be subject to such other requirements and restrictions as the commission deems necessary to comply fully with the purposes of this act.

(d) If the commission finds that any person has, after the effective date of this act, initiated, created or originated any discharge into the waters of the state without a permit as required in subsection (a) hereof, or in violation of such a permit, it shall, notwithstanding any request for a hearing pursuant to section 15 of this act or the pendency of an appeal therefrom, request the attorney general to bring an action in the superior court for Hartford county to enjoin such discharge by such person until he has received a permit from the commission or has complied with a permit which the commission has issued pursuant to this section. Any such action brought by the attorney general shall have precedence in the order of trial as provided in section 52-191 of the general statutes.

SEC. 10. The commission shall periodically investigate and review those sources of discharge which are operating pursuant to any order, permit, directive or decision of the commission issued before or after the effective date of this act and, if it determines that there has been any substantial change in the manner, nature or volume of such discharge which will cause or threaten pollution to any of the waters of the state, or if it finds that the system treating such discharge, or the operation thereof, no longer insures or adequately protects against pollution of the waters of the state, the commission shall issue an order to abate such pollution to such person or municipality. Such order shall include a time schedule for the accomplishment of the necessary steps leading to the abatement of the pollution.

SEC. 11. If the commission finds that any person is maintaining any facility or condition which reasonably can be expected to create a source of pollution to the waters of the state, it shall issue an order to such person maintaining such facility or condition to take the necessary steps to correct such potential source of pollution. Any person who receives an order pursuant to this section shall have the right to a hearing and an appeal in the same manner as is provided in sections 15 and 16 of this act. If the commission finds that the recipient of any such order fails to comply therewith, it shall request the attorney general to bring an action in the superior court for Hartford county to enjoin such person from maintaining such potential source of pollution to the waters of the state. All actions brought by the attorney general pursuant to

the provisions of this section shall have precedence in the order of trial as provided in section 52-191 of the general statutes.

SEC. 12. Whenever the commission issues an order to abate pollution to any person pursuant to the provisions of section 8 or 10 of this act, and the commission finds that such person is not the owner of the land from which such source of pollution emanates, the commission may issue a like order to the owner of such land or shall send a certified copy of such order, by certified mail, return receipt requested, to the owner at his last-known post office address. When the commission issues an order to an owner, the owner and the person causing such pollution shall be jointly and severally responsible. Any owner to whom an order is issued or who receives a certified copy of an order pursuant to this section shall be entitled to all notices of, and rights to participate in, any proceedings before or orders of the commission and to such hearing and rights of appeal as are provided for in sections 15 and 16 of this act.

SEC. 13. When the commission issues an order to any person to abate pollution, it may cause a certified copy thereof to be filed on the land records in the town wherein the land is located, and such order shall constitute a notice to the owner's heirs, successors and assigns. When the order has been fully complied with, the commission shall issue a certificate showing such compliance, which certificate the commission shall cause to be recorded on the land records in the town wherein the order was previously recorded.

SEC. 14. If any person or municipality fails to comply with any order to abate pollution, or any part thereof, issued pursuant to the provisions of section 7, 8, 10 or 12 of this act, and no request for a hearing on such order or appeal therefrom is pending and the time for making such request or taking such appeal has expired, the commission shall request the attorney general to bring an action in the superior court for Hartford county to enjoin such person or municipality from maintaining such pollution and to comply fully with such order or any part thereof. All actions brought by the attorney general pursuant to the provisions of this section shall have precedence in the order of trial as provided in section 52-191 of the general statutes.

SEC. 15. Each order to abate pollution issued under section 7, 8 or 10 of this act shall be sent by certified mail, return receipt requested, to the subject of such order and shall be deemed issued upon deposit in the mail. Any person or municipality aggrieved by any such order may, within thirty days from the date such order is sent, request a hearing before the commission. After such hearing, the commission shall consider the facts presented to it by the person or municipality, including, but not limited to, technological feasibility, shall consider the rebuttal or other evidence presented to or by it, and shall then revise and resubmit the order to the person or municipality, or inform the person or municipality that the previous order has been affirmed and remains in effect. The request for a hearing as provided for in this section shall be a condition precedent to the taking of an appeal by the person or municipality under the provisions of section 16 of this act. The commission may, after the hearing provided for in this section, or at any time after the issuance of its order, modify such order by agreement or extend the time schedule therefor if it deems such modification or extension advisable or necessary, and any such modification or extension shall be deemed to be a revision of an existing order and shall not constitute a new order. There shall be no hearing subsequent to or any appeal from any such modification or extension.

SEC. 16. Any person or municipality aggrieved by any order of the commission to abate pollution may, after a hearing by the commission as provided for in section 15 of this act, appeal from the final determination of the commission based on such hearing to the superior court for Hartford county within fifteen days after the issuance of such final determination. Such final determination shall be sent by certified mail, return receipt requested, and shall be deemed issued upon deposit in the mail. Such appeal shall have precedence in the order of trial as provided in section 52-192 of the general statutes. All appeals taken pursuant to this section shall be based solely upon the record of the hearing required in section 15 of this act. The court shall determine whether the commission acted arbitrarily, unreasonably or contrary to law. If upon any such appeal, any question of law is raised which any party claims should be reviewed by the supreme court, the superior court judge shall forthwith transmit a certificate of his decision, including therein such question of law, together with a proper finding of fact, to the chief justice of the supreme court who shall thereupon call a special session of said court for the purpose of an immediate hearing upon the questions of law so certified. The chief justice of the supreme court may make such orders as will expedite said appeal, including orders specifying the manner in which the record on appeal may be prepared.

SEC. 17. Any person or municipality which knowingly violates any provision of this act shall forfeit to the state a sum not to exceed one thousand dollars, to be fixed by the court, for each offense. Each violation shall be a separate and distinct offense and, in case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The attorney general, upon complaint of the commission, shall institute a civil action to recover such forfeiture.

SEC. 18. The commission shall make a grant to any municipality which, after the effective date of this act, constructs, rebuilds, expands or acquires a pollution abatement facility. In the case of a municipality which, on said date, is in the process of constructing, rebuilding, expanding or acquiring such a facility, such grant shall apply only to that part of the facility constructed, rebuilt, expanded or acquired after said date. The grants under this section shall be subject to the following conditions: (1) No grant shall be made for any pollution abatement facility unless such facility, and the plans and specifications therefor, are approved by the commission, and such facility is constructed in accordance with a time schedule of the commission, and subject to such requirements as the commission shall impose. If the commission requires that the facility be approved by the federal water pollution control administration, such grant shall be conditioned upon the municipality complying with all of the requirements of said water pollution control administration; (2) no grant shall be made until the municipality has agreed to pay that part of the total cost of the facility which is in excess of the applicable state and federal grants; (3) the grant to each municipality shall equal thirty per cent of the cost of such facility, which cost shall be that cost which the federal water pollution control administration uses or would use in making a federal grant, except that where the commission has approved plans for a facility exceeding the requirements of the federal act, the grant shall be thirty per cent of the actual cost; (4) the state grant under this section shall be paid to the municipality in partial payments similar to the time schedule that such payments are or would be provided to the municipality by the federal water pollution control administration; (5) no grant shall be made unless the municipality assures the commission of the proper and efficient operation and maintenance of the pollution abatement facility after construction; (6) no grant shall be made unless the municipality has filed properly executed forms and applications prescribed by the commission; (7) any municipality receiving state or federal grants for pollution abatement facilities shall keep separate accounts by project for the receipt and disposal of such eligible project funds.

SEC. 19. The commission may provide a grant of thirty per cent to a municipality for the cost of those projects which it determines to be essential to a storm and sanitary sewer separation program when it finds that such project is primarily for the separation of storm and sanitary sewage and will eliminate a substantial source of pollution. The cost of the project used to determine the state grant in this section shall not include any cost for the acquisition of land or any rights or interests therein.

SEC. 20. If federal funds are not available to the municipality at the time of its scheduled construction of a pollution abatement facility, the commission shall advance to such municipality, in addition to the state contribution provided for in section 18, that sum of money which would equal the amount of the federal grant, provided the municipality shall agree that any federal contribution thereafter made for the project shall be forwarded to the state as reimbursement for the funds expended under this section. Prior to advancing the federal share, the commission shall require the municipality to agree in its project contract with the commission to do all that is necessary to qualify for the federal grant. The municipality shall also agree to pay over to the commission any instalment of a grant received from the federal water pollution control administration on which the state has made an advance under this section. Said monies received from the municipality shall be deposited in a sinking fund which is hereby established for payment of the debt service costs of bonds issued under section 25 of this act.

SEC. 21. If federal funds for contract plans and specifications for the construction of a pollution abatement facility are not available to the municipality at the time of its scheduled planning, the commission shall advance to such municipality a sum equal to seven per cent of the estimated construction cost, said amount to be used by the municipality for the purpose of preparing contract plans and specifications; provided any remaining balance of the seven per cent advanced under this section shall be applied to the cost of construction of the facility. The funds advanced to the municipality under this section shall be considered a part of the total amount of the state grant provided for in section 18 of this act. Such facility shall be constructed in accordance with a schedule of the commission and shall be in conformance with an engineering report approved by the commission. Before approving the engineering report required in this section, and in section 7 of this act, and as may be required under section 10 of this act, the commission shall, among other factors, give due regard to whether such report is in conformance with its applicable guidelines, whether such report makes adequate recommendations concerning all existing and anticipated community discharges, whether such report conforms with existing planning studies and whether satisfactory considerations have been given to all regional problems outlined to the engineer in a pre-report conference with the commission.

SEC. 22. If federal funds for an engineering report are not available, and the schedule of the commission as provided for in section 7 of this act requires that a municipality prepare such a report before July 1, 1968, and the commission finds that the charter of such municipality does not authorize a reasonable method for providing the required funds to proceed on such a report in time to accomplish its completion as scheduled, the commission may advance funds to such municipality in the amount necessary to provide such report, said funds to be used by the municipality for the purpose of preparing such report. Any

funds advanced to the municipality under this section shall be considered a part of the total amount of the state grant provided for in section 18 of this act.

SEC. 23. The commissioner of agriculture and natural resources is designated as the officer of the state to manage, administer and control funds appropriated by the general assembly or authorized by the state bond commission to carry out the provisions of this act. All grants made pursuant to this act shall be made only with the advice and consent of the commissioner and no grant shall be made under this act if such grant, together with all grants awarded prior thereto, exceeds the amount of funds available therefor.

SEC. 24. The water resources commission is designated as the administrative agency of the state, acting with the advice and consent of the commissioner of agriculture and natural resources, to apply for and accept any funds or other aid and to cooperate and enter into contracts and agreements with the federal government relating to the planning, developing, maintaining and enforcing of the program to provide clean water and pollution abatement of the waters of the state, or for any other related purpose which the congress of the United States has authorized or may authorize. The commission, with the advice and consent of the commissioner of agriculture and natural resources, is authorized in the name of the state to make such applications, sign such documents, give such assurances and do such other things as are necessary to obtain such aid from or cooperate with the United States or any agency thereof. The commission may, with the advice and consent of the commissioner of agriculture and natural resources, enter into contracts and agreements and cooperate with any other state agency, municipality, person or other state when the same is necessary to carry out the provisions of this act. Such contracts shall be subject to the approval of the attorney general as to form.

SEC. 25. (a) The state bond commission is empowered to authorize the issuance of bonds of the state in one or more series in an aggregate principal amount not exceeding one hundred fifty million dollars. The proceeds of the sale of said bonds shall be used for the making of advances and grants under sections 18 to 22, inclusive, and 35 of this act and for the payment of expenses incurred by the department of agriculture and natural resources in carrying out the provisions of this act which are not otherwise provided for from the state general fund. Not more than one-half of one per cent of said proceeds shall be used for the payment of such expenses. Said bonds shall be issued in accordance with section 3-20 of the general statutes and the full faith and credit of the state are pledged for the payment of the principal of and interest on said bonds as the same become due.

(b) All of said bonds shall be payable at such place or places as may be determined by the treasurer pursuant to section 3-19 of the general statutes and shall bear such date or dates, mature at such time or times not exceeding twenty years from their respective dates, bear interest at such rate or different or varying rates and payable at such time or times, be in such denominations, be in such form with or without interest coupons attached, carry such registration and transfer privileges, be payable in such medium of payment and be subject to such terms of redemption with or without premium as, irrespective of the provisions of section 3-20 of the general statutes, may be provided in the determination authorizing the same or fixed in accordance therewith. Notwithstanding the provisions of said section 3-20, any of said bonds may be sold to the United States or any agency or instrumentality thereof in such manner and on such terms as may be provided in the determination authorizing the same or fixed in accordance therewith.

SEC. 26. Any town may, by ordinance, establish a special taxing district for the purpose of defraying, by taxes levied solely upon properties within such district, any of the costs of acquisition or construction of a sewerage system in accordance with the provisions of chapter 103 of the general statutes. Such special taxes shall be based upon annual budget appropriations and estimates of receipts from special benefit assessments and use charges levied with respect to such system approved by such town for the special taxing district in the manner required for the adopting of the annual budgets of such town and shall be included but shown separately in the annual tax levies of such town. Such town may, from time to time, by ordinance, alter the boundaries of such special taxing district. To meet any costs of acquisition or construction, including planning, of any such sewerage system the town may issue its general or special obligation bonds in accordance with the laws applicable thereto, the principal and interest on which shall be paid from the budgets of such special taxing district. For the purposes of this section "town" means town, consolidated town and city and consolidated town and borough.

SEC. 27. Subsection (51) of section 12-81 of the 1965 supplement to the general statutes is repealed and the following is substituted in lieu thereof: [Any structure, building, machinery or other equipment after July 1, 1965, constructed, installed and used primarily for the purpose of eliminating industrial waste, or pollution of waters as defined in section 25-19. A certification by the water resources commission that such structure, building, machinery or other equipment is approved for the elimination of industrial waste or for water pollution control shall require the assessors of the town where such property is located to exempt such property from taxation. This exemption shall not apply to any water company as defined

by section 16-1.] *Structures and equipment acquired after July 1, 1965, for the treatment of industrial waste before the discharge thereof into any waters of the state or into any sewerage system emptying into such waters, the primary purpose of which is the reduction, control or elimination of pollution of such waters, certified as approved for such purpose by the water resources commission. For the purpose of this subsection "industrial waste" means any harmful thermal effect or any liquid, gaseous or solid substance or combination thereof resulting from any process of industry, manufacture, trade or business, or from the development or recovery of any natural resource.*

SEC. 28. Section 12-412 of the general statutes is amended by adding subdivision (u) as follows: Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities for the treatment of industrial waste before the discharge thereof into any waters of the state or into any sewerage system emptying into such waters, the primary purpose of which is the reduction, control or elimination of pollution of such waters, certified as approved for such purpose by the water resources commission. For the purposes of this subdivision "industrial waste" means any harmful thermal effect or any liquid, gaseous or solid substance, or combination thereof resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resource.

SEC. 29. There shall be allowed as a credit against the tax imposed by chapter 208 of the general statutes in any income year an amount equal to the product of the tax rate imposed by section 12-214 of the 1965 supplement to the general statutes for such income year multiplied by the amount of expenditures paid or incurred during such income year for the construction, rebuilding, acquisition or expansion of pollution abatement facilities, including the planning thereof, provided (a) such credit shall be allowed only with respect to pollution abatement facilities approved as such by the water resources commission, the construction, rebuilding, acquisition or expansion of which was commenced after January 1, 1967; (b) the net income for such income year and succeeding income years shall be computed without any deductions for such expenditures or for depreciation of such facilities, except to the extent the cost or other basis of such facilities may be attributable to factors other than such expenditures or in case a credit is allowable pursuant to this section for only a part of such expenditures, any deduction allowable under the federal internal revenue code for such expenditures or for depreciation of such facilities shall be proportionately reduced in computing net income for the income year and all succeeding income years; and (c) upon the sale or other disposition of such facilities in any income year the gain or loss on such sale or other disposition shall be the gain or loss which would have resulted if the cost or other basis of such facilities had been reduced by straight line depreciation based on the useful life of such facilities, except that, if such sale or other disposition occurs within three years after the date such facilities were placed in operation, the basis of such facilities for the purpose of determining gain or loss shall be zero.

SEC. 30. In determining gross income subject to tax under chapter 213 of the general statutes a taxpayer at its election may either deduct expenditures made or incurred for the construction, rebuilding, acquisition or expansion of pollution abatement facilities, including the planning thereof, in the income year in which such expenditures were paid or incurred, or amortize such expenditures over a period of not more than five taxable years commencing with the year in which such expenditures were paid or incurred, by deducting an equal portion thereof in each income year during such period, provided no such deduction shall be allowed with respect to expenditures made or incurred for pollution abatement facilities not approved as such by the water resources commission, or the construction, rebuilding, acquisition or expansion of which was commenced prior to January 1, 1967.

SEC. 31. There shall be allowed as a credit against the tax imposed by chapter 211 of the general statutes in any tax year an amount equal to the product of the tax rate imposed by section 12-258 of the 1965 supplement to the general statutes for such tax year multiplied by the amount of expenditures paid or incurred during such tax year for the construction, rebuilding, acquisition or expansion of pollution abatement facilities, including the planning thereof, provided such credit shall be allowed only with respect to pollution abatement facilities approved as such by the water resources commission, the construction, rebuilding, acquisition or expansion of which was commenced after January 1, 1967.

SEC. 32. There shall be allowed as a credit against the tax imposed by chapter 212 of the general statutes in any tax year an amount equal to the product of the tax rate imposed by section 12-264 of the general statutes for such tax year multiplied by the amount of expenditures paid or incurred during such tax year for the construction, rebuilding, acquisition or expansion of pollution abatement facilities, including the planning thereof, provided such credit shall be allowed only with respect to pollution abatement facilities approved as such by the water resources commission, the construction, rebuilding, acquisition or expansion of which was commenced after January 1, 1967.

SEC. 33. Section 25-3a of the 1965 supplement to the general statutes is repealed and the following is substituted in lieu thereof: In all cases wherein the water resources commission is required to hold

hearings, public or otherwise, on any matter within its jurisdiction, said commission *may hold such hearing sitting as a body or may designate a subcommittee consisting of not fewer than three members of said commission, or may designate a member of the commission or a member of its staff to act as a hearing examiner, said subcommittee or hearing examiner* to hold such hearing, at the time and place designated by said commission. *When the commission designates a subcommittee to hold the hearing, one member of said subcommittee shall be designated as chairman. The subcommittee designated to hold such hearing shall be known as the hearing subcommittee. The hearing subcommittee chairman for any hearing before the subcommittee, or any member of the commission for any hearing before the commission, or the hearing examiner, may issue subpoenas, administer oaths and cause the attendance of witnesses and the production of evidence and testimony in any proceeding pending before it. The subcommittee or the hearing examiner shall, after each hearing, file with the commission a report including a finding of fact and recommendations. After considering the report of the subcommittee or the hearing examiner and the testimony of the hearing, the commission shall issue such order or permit as is applicable to the particular proceeding.*

SEC. 34. All orders, directives or decisions of the water resources commission which are in existence on the effective date of this act shall continue in force until rescinded, amended or repealed by the commission.

SEC. 35. The commission shall make a grant to any municipality which, prior to the effective date of this act, constructed, rebuilt, acquired or expanded a pollution abatement facility, which grant shall be thirty per cent of the principal amount of bond or note obligations of such municipality, issued to finance such construction, rebuilding, acquisition or expansion and outstanding on said date, exclusive of all interest costs and for which grant application is made on an application prescribed by the commission. Such grant shall be paid in equal annual instalments at least thirty days prior to the date the municipality is obligated to make payment on such bonds or notes, provided any grant under this section shall be reduced by any amount payable to such municipality under the provisions of section 18 of this act for the same construction, rebuilding, acquisition or expansion project, such reduction to be prorated over the period remaining for the payment of such bonds or notes.

SEC. 36. Sections 25-19 to 25-24, inclusive, of the general statutes, as amended, are repealed.

SEC. 37. This act shall take effect from its passage.

Certified as correct by

Arthur G. Lewis
Legislative Commissioner

Charles M. McCollough
Clerk of the Senate

Paul B. Groobert
Clerk of the House

Approved May 1, 1967
John Dempsey
Governor

APPENDIX B

FEDERAL PAPER BOARD COMPANY, INC. VERSAILLES, CONN.

May 3, 1966

The following is a brief report of some of the facts pertaining to waste disposal at the two paper board mills of the Federal Paper Board Company which are located on the Little River in Versailles in the Town of Sprague. The accusation has been made a number of times by organizations and individuals that neither the State Water Resources Commission nor the Federal Paper Board Company has done anything to correct the pollution problem caused by the discharge of wastes from the two paper mills. This is neither correct nor just. While both state and company officials recognize that the problem has not been solved, to say that nothing has been done is not only inaccurate but also misleading. Such assertions are generally made by those who have made no effort to acquaint themselves with the true facts.

Throughout this report the word Commission and the word Company, unless otherwise stated, shall refer to the State Water Resources Commission and the Federal Paper Board Company, respectively.

A number of years ago, when there was only one paper board mill in Versailles, the Company, at the request of the Commission, installed a large, elevated, settling tank, made of concrete and with a design similar to that of a Marx conical save-all. The cost of this installation in 1949 was \$155,000. For 16 years this tank has retained hundreds of tons of paper fiber which formerly made its way into the stream. In addition to the settling tank, a number of lagoons were constructed on the far side of the river, into which the dewaxing wastes were discharged in order to keep the paraffin out of the stream. The cost of constructing these lagoons and appurtenances amounted to thousands of dollars.

When the new mill was constructed the paper machine was of a new and unique design never before used in this country and with only one other machine like it in operation in England. Its outstanding characteristic was that it could produce paper board at a far greater speed than the conventional type board machine. It was more nearly akin to the type of machine used in a tissue mill.

It was believed that all the necessary precautions had been taken to insure that there would be no pollution problem and that all wastes would be controlled in a satisfactory manner. Unfortunately, all kinds of unanticipated difficulties were encountered when the new machines were put into operation and countless hours and large sums of money had to be spent to overcome these troubles. Many of the breakdowns permitted considerable quantities of paper stock, often of great value, to escape to the river. This material, added to old accumulations, was the cause of the subsequent trouble. To complicate the problem still further, the drought of the last four or five years has deprived the streams of their normal flow, thus aggravating the oxygen depletion problem and encouraging the generation of obnoxious odors. It was a most unfortunate coincidence.

When the problem came to the attention of the Commission, conferences were immediately held with the Company officials. The first step was to make as many in-plant changes and corrections as possible in an effort to drastically reduce the amount of paper fiber being lost. The Company also retained a competent and experienced consulting engineering firm to study the whole problem and to prepare plans and recommendations for the solution of the same.

Such a study cannot be made in a day but it was carried to completion as rapidly as possible. Frequent conferences were held with the Commission and all phases of the project were carefully considered and thoroughly discussed. As a result of the survey a treatment plant was installed consisting of a Flocculator, a 135 foot diameter clarifier, sludge dewatering lagoons, pump house and pumps, pipe lines and other appurtenances. Five large, mechanical aerators were installed in the pond for the purposes of introducing oxygen into the water. The cost of the project was over \$500,000. This does not include the fees for consultants nor the value of the time spent on the work by company engineers and technicians.

It is of interest to note that when the aerators are in use the cost of the electricity to operate them is \$1400 per month. The cost for the operation and maintenance of the treatment facilities during the last year was approximately \$70,000.

There has never been a cessation of activity. Throughout the winter a crane with a clam-shell bucket has been busy straightening the channel of the brook, deepening the upper end of the pond and making other changes which will facilitate the introduction of oxygen into the water. With the advent of spring

a large bulldozer was brought in and is moving countless tons of earth in order to cover the soggy areas and stabilize them. When this swampy stretch has been thus improved one of the chief sources of odor will have been eliminated. The cost of this latter project will probably be in excess of \$25,000.

When the earth-moving project has been completed one of the aerators will be stationed at the inlet end of the pond since this will now be possible because of the dredging done during the winter. The other aerators will be located strategically through the remaining length of the pond in such a manner as to provide maximum oxygenation for the whole body of water.

When the State Highway Department recently rebuilt the bridge on Route 138 (Bushnell Hollow Road) the Company permitted it to remove sand and gravel from the Company's property for fill. This has created a large excavation which may now be used for the disposal of dried sludge from the dewatering lagoons.

For some time the Company has had a man in charge of the treatment system. Recently it hired a trained man whose sole duty it will be to have complete charge over all matters pertaining to waste disposal. He does not replace the treatment plant operator but will supervise the operation of all treatment facilities, the collection and analysis of samples and the operation and maintenance of the aerators. Whenever any abnormal condition occurs in the treatment system it will be his responsibility to determine its cause. He will exercise considerable authority and will make daily reports to the plant manager. This is a procedure which might well be adopted by other waste-producing concerns and should prove most advantageous. The man chosen for this position appears to be alert, intelligent and interested in solving the problem. Simply placing responsibility in one capable person should correct some of the operational difficulties.

A brief inspection of some of the Company's analytical reports is interesting. For instance, a determination of the dissolved oxygen in the pond is made every day. During the last few weeks the minimum, 6.4 p.p.m., occurred on April 19th, and the maximum, 10.0 p.p.m., on May 2nd. This is more than sufficient for odor control and even an abundant supply for aquatic life.

The removal of suspended solids in the clarifier would seem to average about six tons per day. And this does not include the many tons removed by the conical save-all which is ahead of the clarifier.

Average solids removal in the clarifier was said to be 58 percent. This is good when one considers the loads, variations and surges to which the unit is subjected.

It is hoped that by the end of the month the level of the pond may be raised about 2-1/2 feet by the manipulation of the gate. It is calculated that this will provide a future detention period of about 4-1/2 days.

Although all portents seem to indicate that, because of the drought, this may be one of the most critical summers in many years, the Company seems to feel confident that it now has the problem under control and that nuisance conditions will no longer prevail. However, it feels some assistance may be required during the most crucial period in the form of additional water which would be introduced into the river from supplies impounded farther upstream.

On Tuesday, May 3rd, the appearance of the Shetucket River at the Connecticut Turnpike highway bridge was satisfactory. However, there have been many times during the last year when this was not true. In this connection there is a factor which is often misunderstood. Although the color or appearance of the stream may be esthetically unsatisfactory this does not necessarily mean that the pollution is serious. For instance, the manufacture of kraft board gives a brownish color to the water whereas in the production of white coated board, fine clay and titanium dioxide escape in small amounts. Even what would be considered negligible amounts of the latter can discolor a river to such an extent that, to the uninformed person, it may appear grossly polluted. In other words, the criterion should be chemical analysis and not just visual appearance.

In conclusion, it is not claimed by anyone that this problem has been completely and permanently solved. There is still much to do and much more will be done as rapidly as possible. It is anticipated that practical improvements will be made almost continuously and new treatment methods adopted if found to be effective. One thing should be borne in mind and that is that the treatment facilities installed in Versailles by the Federal Paper Board Company is one of the most complete systems installed by any board mill of comparable size.

Willis J. Snow
Principal Engineer

APPENDIX C

THE ACTION PROGRAM

The Connecticut Clean Water Task Force

RECOMMENDS

To the Connecticut General Assembly

1. Grants-in-aid from the State to municipalities of 30 percent of the cost of construction, reconstruction and enlargement of sewage treatment plants, sanitary sewer interceptors and necessary appurtenances, including systems to separate storm water runoff from sanitary sewers but excluding street sewers and collecting sewers. Planning costs of a project are to be considered part of the project cost for grant purposes. Grants to be increased to no more than 40 percent of the cost for facilities shared by two or more towns or provided by an intertown or metropolitan district where joint action is economically desirable and beneficial.
(Comment: The benefits of clean water are statewide and should be paid for in part by the State.)
2. Prefinancing by the State of Federal Government grants to municipalities whenever necessary to assure the municipalities of the full State and Federal assistance when they are prepared to start construction. Planning costs of a project are considered part of the project cost for prefinancing purposes.
(Comment: Grants from the Federal Government depend on annual appropriations. Prefinancing permits construction to go forward on the State's schedule. Municipalities will need to borrow only for their share of the cost.)
3. Advances by the State to municipalities for the preparation of construction plans and specifications for sewerage systems, up to six percent of the estimated cost of a project. This planning advance to bear no interest and to be deducted from the subsequent state grant for construction.
(Comment: Municipalities will be enabled to proceed promptly with engineering plans without waiting for loans from the Federal Government. Six percent of the estimated project cost will carry planning to the grant stage.)
4. Municipalities — to be eligible for the State grant and for the prefinancing of the Federal grant — must have completed all necessary planning and engineering, received approvals from the appropriate State and Federal agencies and start construction on a date specified by the State Water Resources Commission in accordance with a schedule aimed at completion of all treatment works by December 31, 1974.
(Comment: This provides a seven-year program, under the assumption that the legislation becomes effective upon passage.)
5. Authorization by the State of the issuance of \$150 million of bonds, to be sold as needed, to finance State grants and to prefinance Federal grants.
(Comment: Amortization in ten years with interest of 5 percent would entail a gross annual cost of \$20 million, including prefinancing of Federal grants.)
6. Revision of the State Corporation Business Tax to permit a one-year write-off of the cost of construction, reconstruction and enlargement of waste treatment plants or installations and appurtenances and to become effective starting with the calendar year 1967.
(Comment: So that industry will not be taxed for nonproductive investment.)
7. Revision of the State Sales and Use Tax to exempt materials and equipment purchased, directly or by contractor, for construction, reconstruction, enlargement and operation of an industrial waste treatment plant, installations and appurtenances, starting with the calendar year 1967.
(Comment: To relieve industry from this tax for nonproductive spending.)
8. Availability of State and Local Redevelopment Funds for industrial relocation to facilitate waste treatment within the State of those industries unable to deal properly with wastes in their present location.
(Comment: In some instances, pollution abatement can be combined with other advantages to industrial operations.)

9. Revision of the Statutes concerning water pollution control to enable Connecticut to adopt, before June 30, 1967, water quality standards and criteria applicable to Connecticut waters, including but not limited to interstate waters or portions thereof, and to provide a plan for implementation and enforcement of such criteria. In accomplishing this revision, the General Assembly should consider, among other things, the following objectives:
 - a. Leave the State clearly with the burden of proof to show pollution;
 - b. Relieve the State from the burden to prescribe specific method of treatment of wastes;
 - c. Relieve the State from the burden of proof that the cost of adequate treatment is reasonable and equitable, while recognizing that they are factors which must be considered.
 - d. Authorize the Commission to issue permits to all polluters within six months of effective date of the law, and fix a time limit for each permit, with due regard for the degree of pollution and complexity of the problems;
 - e. Leave the Commission's right to seek redress in Court against any polluter whose permit has expired or who has not complied with an order;
 - f. Leave the polluter with the right of appeal to a Court on grounds of legality or equity;
 - g. Authorize the State Water Resources Commission to require construction or installation of means of preventing intermittent or accidental pollution.
(Comment: A new legal approach to water pollution may be required, geared to the efficient utilization of the water resources in an industrialized and densely populated State. The attention of the General Assembly is invited to the possible need for expansion of existing legislation into a water rights code tailored to the needs of the State.)
10. Authorization for the State Water Resources Commission to appoint hearing examiners to conduct public hearings on matters before the Commission relative to pollution or otherwise, and make findings of fact to the Commission for its decisions.
(Comment: The nonsalaried Commissioners should not have to take from their daily schedules as many hours as will be required under the proposed program.)
11. Study of the organizational structure of the Water Resources Commission and of the State Health Department in the light of requirements that will be placed upon them by the program proposed by the Task Force.

The Connecticut Clean Water Task Force

URGES

The Governor and the Legislature

To encourage or authorize (as may be appropriate) the State Water Resources Commission:

12. To develop water quality standards which would satisfy an ultimate objective for all Connecticut water that the quality shall be not less than that suitable for recreation (including bathing), irrigation, agricultural uses and industrial cooling and processing, good fish habitat, good aesthetic value and, where practicable, not less than acceptable for public water supply with filtration, disinfection and other reasonable treatment methods.
In achieving this objective the standards of quality established should be such as to protect the public health and welfare and enhance the quality of water with due regard to the need of water for public water supplies, propagation of fish and wildlife, recreational purposes, agricultural, industrial and other legitimate uses. Furthermore, any plan for implementation and enforcement should give due consideration to the general economic feasibility of complying with such standards and must, of necessity, satisfy due process of law.
(Comment: It is the sense of the Task Force's recommendation that the attainment of the highest degree of water quality consonant not only with the varied uses listed above but also with technological advances in water pollution treatment should be Connecticut's objective. The Task Force further urges that there be periodic review of the standards for the purpose of enhancing water quality.)
13. To develop comprehensive long-range plans for dealing with the problem of improving water quality in the face of an expanding demand for water for public water supply, industry, agriculture, recreation, and propagation of fish and wildlife and to coordinate these plans with other planning activities in the State and in New England.

(Comment: There has been no attempt to measure total future needs in the State and the Region and the diversity of public and private agencies makes planning difficult but, because of this diversity, essential.)

14. To maintain a comprehensive file of sewage and industrial waste discharge to waterways and of potential accidental discharges to waterways, whether treated or untreated, as well as dates and results of periodic inspections, with a summary report to the Governor at least annually, including the reports from the State Health Department.

(Comment: To provide a continuing review of the results to achieve Clean Water.)

15. To expand initially its staff threefold over the present force to provide for periodic inspection of sewage and waste discharges and treatment plants, for classification of waterways, for sampling, and for review and approval of plans for construction of treatment facilities, and for long-range planning.

(Comment: To correct a long-standing deficiency and to implement the Clean Water Program.)

16. To establish realistic salary schedules for professional and technical staff, comparable to those prevailing in the Federal Government and in other states.

(Comment: To attract the quality and quantity of staff required.)

17. To adopt a training program for engineers and technicians in nearby institutions.

(Comment: To maintain a high caliber staff after it is acquired.)

18. To budget appropriate funds for research and necessary consulting services.

(Comment: To provide resources for the required studies and flexibility in proceeding with the task.)

To encourage or authorize (as may be appropriate) the State Health Department:

19. To expand its program of Regional Health Centers to provide assistance to local health directors and planning and zoning officials.

(Comment: It is expected that these facilities will also be available to personnel of the State Water Resources Commission.)

20. To maintain a comprehensive file of community sewage discharges to waterways, both treated and untreated, and of the dates and results of periodic inspections, with a summary report to the State Water Resources Commission at least annually.

21. To expand training programs for sanitary engineers at qualified institutions.

22. To budget as appropriate, in the Bureau of Sanitary Engineering, for the increased activities involved in this program.

The Connecticut Clean Water Task Force

RECOMMENDS

To Connecticut Members of Congress

23. Support for proposals for a six-year, \$6 billion Federal program of grants for sewage treatment plants as provided by S.2947 with the additional funds to be allocated to the states on a population basis and with all project ceilings for grants to be eliminated when the State matches the Federal grant and each pays a full 30 percent. We urge that provision be made for the Federal grant to be paid directly to the State for any prefunded payment by the State.

(Comment: To meet the actual needs if the Federal Government is going to make a substantial contribution to the pollution control problem.)

24. Support for proposals for Federal corporate income tax changes to authorize three-year write-off of the cost of constructing or installing equipment for the treatment of industrial wastes, this write-off to include construction or installation commenced or completed during 1966.

25. That Federal funds be made available for industrial relocation within the State when this is the most practicable remedy for water pollution.

26. Support for enactment of the program proposed by Senator Ribicoff to establish the Connecticut River National Parkway and Recreation Area (S. 2460).

The Connecticut Clean Water Task Force

URGES

The Governor and the Legislature

27. To take steps with appropriate states to include Connecticut River in the Federal Program under Title I of the Clean River Restoration Act of 1966 (S. 2987).

(Comment: To join with adjacent states in seeking a solution to a common problem.)

The Connecticut Clean Water Task Force

URGES

28. Water Using Industries to make a real effort to understand the need for state-wide pollution control, to employ such engineering assistance as it may require, to use the advisory services of the State Water Resources Commission and to install and operate such waste treatment facilities as are necessary.

The Connecticut Clean Water Task Force

URGES

29. Connecticut municipal officials and voters to make a real effort to understand the need for state-wide pollution control, to employ such engineering assistance as it may require, to use the advisory services of the State Department of Health and of the State Water Resources Commission and to install and operate such waste treatment facilities as are necessary.
30. That municipalities review carefully the possibilities contained in Chapter 103 of the General Statutes for financing municipal sewerage system components and for cooperating with industry to abate pollution by domestic sewage and by industrial wastes. Municipalities making agreement to treat industrial wastes should reserve the right of supervision of installation and operation of any pretreatment at the factory necessary for protection of sewers, treatment plants and appurtenances.
31. That municipalities establish or revise zoning ordinances that will protect adequately private and public water supplies and domestic sewage disposal.

The Connecticut Clean Water Task Force

URGES

32. The State Highway Department and all municipal street and highway departments to use great care in handling and controlling road oils, tars, road sand, road salt and chemicals mixed with salt to facilitate storing.