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A Procedure For

~~PROJECT REVIEW AND~~ PERMIT CONSOLIDATION WITHIN THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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Preliminary Report
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Prepared by

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PROJECT REVIEW AND PERMIT CONSOLIDATION
WITHIN THE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

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I. Introduction

The purpose of this report is to examine the programs and activities of the Department of Environmental Conservation with respect to its project review and permit issuance responsibilities within the coastal management area of the state. Such examination should lead to recommendations for improvements in DEC permit handling procedures, both through internal consolidation and external coordination with other agencies at all levels of government.

The report will also set forth those DEC programs and manner of their administration which are key elements in the State's fulfillment of subsection 305(b)(4) of the Coastal Zone Management Act (CZM Act). Under that section, states must identify "...the means by which they will exert control over land and water uses subject to the management programs."

Before elaborating on DEC project review and permit programs, a brief review has been made of those sections of federal regulations about to be promulgated by the Office of Coastal Zone Management (OCZM) which relate to the development of state coastal management mechanisms and authorities, in particular as they apply to project review and permit activities.

Within the coastal areas of New York some DEC project review and permit activities have very special relevance; for example, those related to protection of wetlands, flood hazard areas, and water quality. But there is a wide array of other permit processes which one way or another must be considered in the coastal area. Organizationally, there are two particularly important pieces of legislation recently incorporated into the Environmental Conservation Law which deal in comprehensive fashion with project review and permit activities. There are the State Environmental Quality Review (SEQR) Act and the Uniform Procedures Act.

The SEQR program is now in process of being fully implemented among state agencies and at local government level. It is a basic element in a decision-making process

involving large scale or otherwise significant governmental projects and actions. Since it has broad ramifications for any permit consolidation processes ~~to be~~ being considered in New York State, it is discussed at some length in another section of this report.

Another comprehensive program affecting review and permit activities in New York is the Uniform Procedures Act, a recent amendment to the Environmental Conservation Law aimed at simplifying and reducing permit handling within DEC. The Uniform Procedures Act forms the basis for the permit consolidation alternatives explored in this report, and a special section detailing DEC implementation of that Act follows below.

Also described are those review and permit activities of other agencies and levels of government; e.g. local zoning, electric generating facility siting under State Public Service Law, and dredging permits under the U.S. Army Corps of Engineers. Such programs are examined with respect to how they may be integrated into or further coordinated with DEC review and permit processes. The ~~ramifications~~ implications of the 1976 amendments to the Environmental Conservation Law allowing delegation of Departmental responsibilities to other governmental agencies by the Commissioner of Environmental Conservation are also discussed.

Concluding sections of this report ~~will~~ examine organizational alternatives for handling project reviews, permits and federal consistency certifications in a coordinated manner within the coastal management area. Need for additions or changes in laws and regulations ~~will be~~ are explored, and suggestions ~~will be~~ have been made for follow-up studies and interagency discussions necessary for better determination of coastal area project review and permit policies to be incorporated into a final report scheduled for March 1978. Recommendations for possible pilot projects ~~may~~ are also ~~be~~ made.

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II. Requirements of CZM Act Regarding Management Authorities, Their Consolidation and Coordination

Subsection 306(e)(1) of the CZM Act provides that before a state may be found to have an appropriate management program, "such program shall contain one or a combination of the following general techniques for control of land and water uses within the coastal zone":

--established state criteria and standards, implemented locally, subject to state administrative review and enforcement

--direct state land and water use planning and regulation

--state administrative review of local actions for consistency with approved coastal management programs, with power to approve or disapprove.

In New York State, it is the combination of these three techniques that is likely to form the basis of any coastal management program approval by the federal government. New York State Department of Environmental Conservation project review and permit programs can be major parts of such techniques.

In Section 923.3 on "General requirements" which are part of proposed Coastal Zone Management Program Approval Regulations (Part 923) to be promulgated by the federal Office of Coastal Zone Management, a comprehensive coastal management program is called for in which policies, standards, objectives and criteria are "anticipated clearly and are sufficiently specific---". Further, there must be "sufficient policies of an enforceable nature to ensure the implementation of and adherence to the management program". The policies called for shall include three broad classes:

---Resource policies directed toward the "management and conservation" of natural areas and resources within the coastal zone which the State deems require management;

---Developmental policies which address such matters as shorefront access, ports and harbors, energy facilities, and the coastal dependency of industrial, commercial and other large scale development.

---Government process policies which address such matters as State-local

roles and responsibilities, and the "clarification and simplification of regulatory and permitting procedures."

Department of Environmental Conservation project review and permit programs pertain to both resource management and developmental policies, but it is the governmental process policies to which they are particularly relevant. Quite apart from coastal management program requirements, statewide needs to clarify and simplify such permit procedures has already resulted in both legislative and regulatory changes such as the DEC Uniform Procedures Act, ~~which will be~~ discussed in later sections of this report.

At federal level, concern for excessive permit handling is evident in Section 930.61 of regulations proposed by the Office of Coastal Zone Management (OCZM) to be followed by state and federal agencies in making determination of federal consistency with approved state coastal management programs. The section encourages the consolidation of related federal license and permit activities being handled under consistency review procedures so that a state agency "one-step" review may be achieved.

Subpart E of the proposed CZM Program Approval Regulations (Part 923) covering "Authorities and Organization" explains at much greater length what constitutes enforcible authorities and options available under the control techniques provided for under subsection 306(e)(1) of the CZM Act noted above. Among the options, related in particular to the technique which would employ direct state land and water use planning and regulation, is the concept of "networking", which is likely to form the basis of much of New York's coastal management authority.

Networking is the utlization of several different, often pre-existing State authorities which are coordinated with and applied on the basis of comprehensive coastal management policies. Networking may be based on State laws and regulations, but also upon executive orders, interagency agreements and memoranda of understanding which can be shown to be "binding and enforceable". The analysis of DEC project review and permit procedures in this report will emphasize their "networking implications.

Other sections of Subpart E of Part 923 Program Approval Regulations which have special significance to the analyses of DEC project review and permit processes are those on: (1) authorities related to uses of regional benefit (923.43); (2) air and water pollution control requirements (923.44); and (3) designated state agency (923.46).

Under "authorities related to uses of regional benefit," the State coastal management program must determine what constitutes such uses and "provide for a method of assuring that local land and water use regulations within the coastal zone do not unreasonablely restrict or exclude land and water uses of regional benefit. Relationships of this provision to the State Environmental Quality Review (SEQR) program and other DEC project review and permit activities must be examined.

The requirement of Section 923.44 relates to the incorporation into the state coastal management program of the program requirements of the Federal Water Pollution Control Act (FWPCA) as amended and the Clean Air Act (CAA) as amended. Since DEC is the lead agency of the State for both of these federal programs, the project review and permit activities of the Department are conducted in conformance with the environmental quality programs statewide, as well as within the coastal zone.

Section 923.46 of the CZM Program Approval Regulations provides that for continued eligibility, the Governor must designate a single State agency to receive and administer implementation funds under Section 306 of the CZM Act. It further provides that it is "--up to the state to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement." Under legislation passed in 1975 and signed by the Governor, the New York Secretary of State has been designated as the single state agency for the receipt and administration of federal grants pursuant to the CZM Act.

Section 923.46 is closely related to Section 930.18 of proposed OCZM regulations regarding federal consistency; it provides that the same designated administrative agency "...is responsible for reviewing the consistency of federal actions." Section 930.18 of the consistency regulations further provides that the state agency responsible for federal consistency review may delegate such responsibilities to a single state agency or clearinghouse, to a number of state agencies, each reviewing certain types of federal actions, to regional agencies (local, county, areawide) or to any combination of the above as may be approved by the Associate Administrator of OCZM. Such delegation is significant to DEC, because of its major state responsibilities for project review and permit procedures and their relationship to federal consistency certification processes.

Subpart F of the Program Approval Regulations (Part 923) calls for provisions within an approvable program of mechanisms to assure adequate and continuing federal-state consultation (923.51) and local consultation (923.57) regarding consistency of actions with respect to an approved state coastal management program. While a notice and comment procedure is prescribed as a state/local consultation mechanism, it is clearly noted that the process is for discussion of differences and that the "ultimate administrative authority to resolve conflicts shall be the state management agency."

Part 923.52 requires that the state coastal management program conforms to the requirements of Subsection 306(c)(8) of the CZM Act "to consider adequately the national interest involved in the planning for and siting of facilities which are necessary to meet other than local requirements...." A set of tables is contained within Subpart F listing types of facilities and resources in which there may be a national interest.

State-federal mediation procedures are provided for under Part 923.54 for disagreements that may arise during development of a state management program and under Part 930.44 for disputes concerning proposed federal agency activities after a state management program has been approved.

Since consistency considerations and matters of national interest all must be part of coordinated project review and permit activities undertaken within the State's Coastal Management area, one of the final sections of this report includes preliminary suggestions for organizational alternatives to accomplish this.

III. Uniform Procedures Act and Its Implications

There are over 150 different types of permits required under various DEC resource management and environmental quality programs. These range from individual hunting and fishing licenses and special fish and wildlife management permits to permits for water supplies and waste discharges for major development projects and industries. While most kinds of licenses and permits are handled with very little delay, permits for major development-related regulatory programs have sometimes been slowed through need for multiple review by DEC and other levels of government, lack of adequate review information and, sometimes confusion by both government and applicants about what permits and reviews are required.

Consequently, the New York Legislature, as part of Governor Carey's legislative program for 1977 passed the Uniform Procedures Law which adds Article 70 to the ECL. The law establishes a new streamlined set of procedures encompassing the major regulatory permit programs within the Department. The law ensures comprehensive environmental review of projects while providing a specific time frame in which permit decisions must be made by DEC.

Specifically, the law does the following:

--establishes strict time limits for DEC review and decisions on permits;

--forces the automatic granting of permits on which DEC fails to act within specified deadlines; and

--authorizes the Department to collect application fees to meet the added cost of expedited permit review.

A. New Procedures for Permit Processing in DEC

It must be stressed that the Uniform Procedures Act applies only to the Department of Environmental Conservation and agencies to which DEC has delegated permitting authority. There are no obligations placed upon other state agencies or other levels of government to act within the time limits established in the law.

Previous internal attempts to streamline the department's permitting procedures have been hindered by the existence of a myriad of inconsistent, and sometimes conflicting, procedural requirements contained in the various statutes under which the department issued the permits in question. The new law establishes uniform administrative procedures to be applied to the department's major development-related permit programs, thus enabling the department to meet the new tight time deadlines. The law's provision for the automatic granting of permits if the department fails to meet the established time schedule insures applicants timely decisions.

In brief, the procedure to be followed requires that the department, within 15 days of receipt of an application, determine whether the project requires other DEC permits, whether the project requires an EIS for SEQR purposes, and whether the application is technically complete to commence review. If the department fails to notify the applicant of the status (complete/incomplete) of the application within 15 days of receipt, the application is deemed complete automatically. The department is required to publish a notice of complete application in the Environmental Notice

Bulletin and provide a copy of the notice to the chief executive officer of the municipality in which the project is to be located. The notice of complete application commences the formal review period.

If the application is for a permit designated "minor" in the implementing regulations (621.12), a decision must be made on it within 45 days; if the application is for a "non-minor" project the decision must be made within 90 days. Determination whether to hold a hearing must be made within 60 days and the hearing commence by the ninetieth day. Final decision for projects on which a hearing has been held must be made within 60 days of completion of the hearing record.

The law and regulations contain special provisions for conceptual review of large developments which entail major changes in land use. These procedures are designed to provide early comprehensive review of the environmental factors involved in the siting of major developments so that there can be more expedited review at a later stage. This process is desirable from the project sponsor's perspective since it gives him the benefit of early review on which to base his detailed planning, and desirable from the department's perspective since it affords the best opportunity to work cooperatively in the planning process to ensure decisions which are environmentally sound.

Most of the 26,000 applications which the department reviews each year are not for projects which require multiple permits, but are for projects which require only one permit. However, successful implementation of Uniform Procedures will require great coordination among all units of the department

and local governments to which permitting authority has been delegated in the initial determination of all permits required, and will require ongoing coordination and monitoring of the projects which require more than one permit. Ultimately this will result in more comprehensive review as well as more efficient review.

Because DEC's regulatory authority covers virtually all development activity in the state, the establishment and implementation of uniform procedures is a key step towards streamlining the whole federal-state-local regulatory process.

B. Permit Programs Covered

The provisions of Article 70 and the procedures contained in Part 621 (Uniform Procedures) apply to application for permits authorized by the following:

(1) Title 5 Article fifteen which authorizes the department to issue stream protection permits, permits for dams and docks, and permits for dredging or fill of navigable water;

(2) Title fifteen of Article fifteen which authorizes the department to issue approvals for water supply and certain Long Island water wells;

(3) Title twenty-seven of Article fifteen which authorizes the department to issue permits for certain land uses and activities within the river area established for designated wild, scenic and recreational rivers;

(4) Section 401 of federal Public Law 92-500 which authorizes the department to issue water quality certifications for federal projects requiring a federal permit;

(5) Title seven and eight of article seventeen which authorizes the department to issue State Pollutant Discharge Elimination System (SPDES) permits:

(6) Title fifteen of article seventeen which authorizes the Department to approve the sewage service for realty subdivisions;

(7) Article nineteen which authorizes the department to issue permits, certificates and approvals for the control of air pollution;

(8) Title seven of article twenty-three which authorizes the department to certify the siting of liquefied natural and petroleum gas facilities;

(9) Title twenty-seven of article twenty-three which authorizes the department to issue mining permits

(10) Article twenty-four which authorizes the department to issue permits for regulated activities in and adjacent to freshwater wetlands;

(11) Article twenty-five which authorizes the department to issue permits for regulated activities in and adjacent to tidal wetlands;

(12) Article twenty-seven which authorizes the department to issue permits to construct and operate solid waste management facilities, and to certify and register septic tank cleaners and industrial waste scavengers; and

(13) Article thirty-six which authorizes the department to issue permits and variances for development in flood hazard areas.

C. Fees

When the Legislature passed the Uniform Procedures Act, they established a list of maximum fees which may be changed for processing various permit applications. Any fees accepted by DEC are used to defray the additional costs incurred by the streamlined application and review process. In addition, any costs or expenses incurred as a result of a hearing shall be borne by the applicant. DEC will not collect Uniform Procedures Fees for those permits issued by local governmental units to which the Department has delegated complete authority for permit issuance. Fees are paid for the review of permit applications, and will not be reimbursed to the applicant should the permit be denied. Table A shows the fee schedule established in Uniform Procedure Regulations (6 NYCRR 621), adopted by DEC in November 1977.

TABLE A

FEE SCHEDULE FOR DEC PERMIT APPLICATION AS ESTABLISHED UNDER UNIFORM PROCEDURES ACT AND 6 NYCRR PART 621

621.5 Fees

(a) Applications for a permit shall be accompanied by a check or money order made payable to the "Department of Environmental Conservation" in the amount specified in paragraph (c) of this section. Payment in cash shall not be accepted.

(b) If an application is withdrawn before it is determined complete, the fee shall be returned to the applicant upon request.

(c) Fees for review of applications shall be as follows:

(1) Stream disturbance of bed or banks:

(i) non-minor projects: $25;

(ii) minor projects: $10.

(2) Dam Construction:

(i) Class A hazard: $10;

(ii) Class B hazard: less than 1,000 acres drainage area - $50; 1,000 acres or more - $100;

(iii) Class C hazard: less than 1,000 acres - $250; 1,000 acres or more - $400.

(3) Dock construction:

(i) docks on piles - $25;

(ii) docks on fill - $125;

(iii) minor projects - $10.

(4) Dredging and filling:

(i) 100 - 499 cubic yards - $15;

(ii) 500 - 1,999 cubic yards - $25;

(iii) 2,000 or more cubic yards - $50.

(5) Water supply: all projects - $50.

(6) Well drillers annual registration fee: corporation: $10; individual: $5.

(7) Permits for activities within the boundaries of designated wild, scenic and recreational river areas: fees not to exceed $50 will be adopted as part of rules and regulations to be adopted pursuant to title twenty-seven of article fifteen.

(8) In the case of an application for a SPDES permit:

(i) for the discharge of 1,000 gpd or less - $50;

(ii) for discharge of 1,001 - 10,000 gpd containing industrial waste - $100;

(iii) for discharge of 10,001 - 100,000 gpd containing industrial waste - $200;

(iv) for discharge of more than 100,000 gpd containing industrial waste - $300;

(v) for municipal sewage discharge of 1,001 - 10,000 gpd - $75;

(vi) for municipal sewage discharge of 10,001 - 100,000 gpd - $150;

(vii) for municipal sewage discharge of more than 100,000 gpd - $250;

(viii) for non-industrial - non-municipal discharge of 1,001 - 10,000 gpd - $50;

(ix) for non-industrial - non-municipal discharge of 10,001 - 100,000 gpd - $75;

(x) for non-industrial - non-municipal discharge of more than 100,000 gpd - $100.

(9) In the case of an application for realty subdivision approvals: $1 per lot (not to exceed $100) in addition to existing fee.

(10) Permits to Construct for new sources of air contamination which are not designated minor in section 621.12: $100 per source.

(11) Recertification of sources of air contamination which are not designated minor in section 621.12:

(i) $30 for a 3 year permit,

(ii) $20 for a 2 year permit, and

(iii) $10 for a one year permit.

(12) Certificates for the siting of liquefied natural and petroleum gas facilities: fees established in rules and regulations adopted pursuant to article twenty-three of the ECL shall not be affected by this Part.

(13) Mining permits: fee established in rules and regulations adopted pursuant to article twenty-three of the ECL shall not be affected by this Part.

(14) Freshwater wetlands:

(i) activities in wetlands of 20 acres or less in size - $25;

(ii) activities in wetlands of greater than 20 acres in size - $50;

(iii) activities in adjacent areas - $15;

(iv) minor projects - $10.

(15) Tidal wetlands:

(i) activities in coastal shoals, bars and flats, littoral zones, coastal fresh marshes, intertidal marshes and high marshes - $50;

(ii) activities in adjacent areas - $25;

(iii) minor projects - $10.

(16) Application for a Permit to Construct a Sanitary Landfill (which will include a Permit to Operate): $400.

(17) Application for a Permit to Operate a Sanitary Landfill:

(i) original application - $300;

(ii) renewal application - $100.

(18) Septic Tank Cleaner and Industrial Waste Collector Registration:

(i) for first collection vehicle - $25;

(ii) for each additional vehicle - $5.

(19) Permits for development in a floodplain: fees established in rules and regulations adopted pursuant to article thirty-six of the ECL shall not be affected by this Part.

(20) The fee for conceptual review shall be $500 with such fee credited towards established permit fees.

(d) When a project involves two or more applications which are to be reviewed concurrently for which fees are required, the fee charged shall be 80% of the total fees required or the highest single fee, whichever is greater.

D. Relationship of Uniform Procedures to SEQR Program

The State Environmental Quality Review Act (SEQR) requires that any agency of State or local government, when directly undertaking an action, funding an action, or reviewing an action for a license or permit determine whether that action may have a significant effect on the environment.

Under Uniform Procedures, actions which are determined to be major may require a statement of SEQR significance. Any project which is a SEQR Type I action will usually require a statement of significance. If a project is determined to be significant for SEQR purposes, an application under Uniform Procedures will not be deemed complete until a draft environmental impact statement, which meets the requirements of SEQR, is accepted by the lead agency. It will be the responsibility of the permit applicant to provide the draft EIS, which will be circulated for public comment, and will become a matter of public record, as well as being used by DEC in the permit review process.

It is the responsibility of DEC to develop rules and regulations which are of state-wide applicability. State and local governmental agencies have been given the option of adding any additional procedures to existing state SEQR regulations (6 NYCRR Part 617), necessary for full implementation of SEQR. In the case of DEC's own Departmental SEQR regulations (6 NYCRR Part 618), adoption of Coastal Zone Management plans has been included in the list of Type I actions requiring SERQ declarations or statements.

Environmental Impact Statements may be required during Conceptual Review of Projects

under Uniform Procedures. The purpose of SEQR is to insure that the environmental impacts of projects are considered in their earliest stages, at the time when any modifications which might be required can be accomplished with a minimum of delay and expense.

No unusual delays in Uniform Procedures are anticipated for projects which are significant for SEQR. Should DEC not be the lead agency for a major project which is significant for SEQR. Should DEC not be the lead agency for a major project which is significant for SEQR, the Uniform Procedures time clock will stop 35 days prior to the final decision date. Upon receipt of a final EIS from the lead agency, DEC will have 35 days in which to mail a decision to the applicant. Uniform Procedures does not extend the time limits for peojects significant for SEQR, for which DEC is the lead agency.

E. Relationship to Outside Review and Permit Activities

Since some permits may incorporate review and action by other agencies and levels of government, care must be taken to insure that there is coordination between these different offices and, more importantly, that all local governments delegated responsibilities issuing DEC permits are able to meet the strict time limits for processing permit applications under Uniform Procedures. Should any local government agencies, such as county health departments, be unable to meet deadline requirements under Uniform Procedures, DEC must step in and re-assume responsibility for issuing permits. This will insure the smooth and swift review of permits necessary under Uniform Procedures. All efforts will be made, however to accomodate and aid local governments in their permit issuance responsibilities.

The Uniform Procedures Act makes allowance for those permits for which DEC is not the lead agency. As mentioned earlier, the time clock will stop 35 days prior to the final decision date, and will be restarted upon receipt of the final EIS and any additional findings from the lead agency. Certain permits will require action at both the regional and central level. The program unit which issues the permit will be responsible for logging and monitoring to meet deadlines.

F. Specific Relationship to CZM Consistency Requirements and Certifications

Under Section 307 of the Federal Coastal Zone Management Act of 1972, as amended, an applicant for a federal permit or license affecting the coastal zone of the State must receive concurrence from the State coastal management agency that the proposed activity is consistent with the state's coastal zone program. Should the state object to the applicant's consistency certification, the federal goverment is unable to issue the permit or license. On the other hand, the federal government may deny a permit or license, for which the state had concurred with the applicant's consistency certification.

It is clear that many projects or actions reviewed for DEC permits under Uniform Procedures will also require federal permits or be receiving federal funding for which a coastal management consistency acknowledgement will be needed. The need for such consistency sign-off should be noted as part of DEC application completion review under Uniform Procedures.

The State Coastal Management Plan consistency review process should be integrated as much as possible into other coordinated project review and permit activities. In some instances this might be achieved through delegation by DOS of Coastal Management consistency review responsibilities to other state or local agencies. This is permissible under OCZM regulations.

III. Uniform Procedures Act and Its Implications

There are over 150 different types of permits required under various DEC resource management and environmental quality programs. These range from individual hunting and fishing licenses and special fish and wildlife management permits to permits for water supplies and waste discharges for major development projects and industries. While most kinds of licenses and permits are handled with very little delay, permits for major development-related regulatory programs have sometimes been slowed through need for multiple review by DEC and other levels of government, lack of adequate review information and, sometimes confusion by both government and applicants about what permits and reviews are required.

Consequently, the New York Legislature, as part of Governor Carey's legislative program for 1977 passed the Uniform Procedures Law which adds Article 70 to the ECL. The law establishes a new streamlined set of procedures encompassing the major regulatory permit programs within the Department. The law ensures comprehensive environmental review of projects while providing a specific time frame in which permit decisions must be made by DEC.

Specifically, the law does the following:

--establishes strict time limits for DEC review and decisions on permits;

--forces the automatic granting of permits on which DEC fails to act within specified deadlines; and

--authorizes the Department to collect application fees to meet the added cost of expedited permit review.

A. New Procedures for Permit Processing in DEC

It must be stressed that the Uniform Procedures Act applies only to the Department of Environmental Conservation and agencies to which DEC has delegated permitting authority. There are no obligations placed upon other state agencies or other levels of government to act within the time limits established in the law.

Previous internal attempts to streamline the department's permitting procedures have been hindered by the existence of a myriad of inconsistent, and sometimes conflicting, procedural requirements contained in the various statutes under which the department issued the permits in question. The new law establishes uniform administrative procedures to be applied to the department's major development-related permit programs, thus enabling the department to meet the new tight time deadlines. The law's provision for the automatic granting of permits if the department fails to meet the established time schedule insures applicants timely decisions.

In brief, the procedure to be followed requires that the department, within 15 days of receipt of an application, determine whether the project requires other DEC permits, whether the project requires an EIS for SEQR purposes, and whether the application is technically complete to commence review. If the department fails to notify the applicant of the status (complete/incomplete) of the application within 15 days of receipt, the application is deemed complete automatically. The department is required to publish a notice of complete application in the Environmental Notice

Bulletin and provide a copy of the notice to the chief executive officer of the municipality in which the project is to be located. The notice of complete application commences the formal review period.

If the application is for a permit designated "minor" in the implementing regulations (621.12), a decision must be made on it within 45 days; if the application is for a "non-minor" project the decision must be made within 90 days. Determination whether to hold a hearing must be made within 60 days and the hearing commence by the ninetieth day. Final decision for projects on which a hearing has been held must be made within 60 days of completion of the hearing record.

The law and regulations contain special provisions for conceptual review of large developments which entail major changes in land use. These procedures are designed to provide early comprehensive review of the environmental factors involved in the siting of major developments so that there can be more expedited review at a later stage. This process is desirable from the project sponsor's perspective since it gives him the benefit of early review on which to base his detailed planning, and desirable from the department's perspective since it affords the best opportunity to work cooperatively in the planning process to ensure decisions which are environmentally sound.

Most of the 26,000 applications which the department reviews each year are not for projects which require multiple permits, but are for projects which require only one permit. However, successful implementation of Uniform Procedures will require great coordination among all units of the department

and local governments to which permitting authority has been delegated in the initial determination of all permits required, and will require ongoing coordination and monitoring of the projects which require more than one permit. Ultimately this will result in more comprehensive review as well as more efficient review.

Because DEC's regulatory authority covers virtually all development activity in the state, the establishment and implementation of uniform procedures is a key step towards streamlining the whole federal-state-local regulatory process.

B. Permit Programs Covered

The provisions of Article 70 and the procedures contained in Part 621 (Uniform Procedures) apply to application for permits authorized by the following:

(1) Title 5 Article fifteen which authorizes the department to issue stream protection permits, permits for dams and docks, and permits for dredging or fill of navigable water;

(2) Title fifteen of Article fifteen which authorizes the department to issue approvals for water supply and certain Long Island water wells;

(3) Title twenty-seven of Article fifteen which authorizes the department to issue permits for certain land uses and activities within the river area established for designated wild, scenic and recreational rivers;

(4) Section 401 of federal Public Law 92-500 which authorizes the department to issue water quality certifications for federal projects requiring a federal permit;

(5) Title seven and eight of article seventeen which authorizes the department to issue State Pollutant Discharge Elimination System (SPDES) permits:

(6) Title fifteen of article seventeen which authorizes the Department to approve the sewage service for realty subdivisions;

(7) Article nineteen which authorizes the department to issue permits, certificates and approvals for the control of air pollution;

(8) Title seven of article twenty-three which authorizes the department to certify the siting of liquefied natural and petroleum gas facilities;

(9) Title twenty-seven of article twenty-three which authorizes the department to issue mining permits

(10) Article twenty-four which authorizes the department to issue permits for regulated activities in and adjacent to freshwater wetlands;

(11) Article twenty-five which authorizes the department to issue permits for regulated activities in and adjacent to tidal wetlands;

(12) Article twenty-seven which authorizes the department to issue permits to construct and operate solid waste management facilities, and to certify and register septic tank cleaners and industrial waste scavengers; and

(13) Article thirty-six which authorizes the department to issue permits and variances for development in flood hazard areas.

C. Fees

When the Legislature passed the Uniform Procedures Act, they established a list of maximum fees which may be changed for processing various permit applications. Any fees accepted by DEC are used to defray the additional costs incurred by the streamlined application and review process. In addition, any costs or expenses incurred as a result of a hearing shall be borne by the applicant. DEC will not collect Uniform Procedures Fees for those permits issued by local governmental units to which the Department has delegated complete authority for permit issuance. Fees are paid for the review of permit applications, and will not be reimbursed to the applicant should the permit be denied. Table A shows the fee schedule established in Uniform Procedure Regulations (6 NYCRR 621), adopted by DEC in November 1977.

TABLE A

FEE SCHEDULE FOR DEC PERMIT APPLICATION AS ESTABLISHED UNDER UNIFORM PROCEDURES ACT AND 6 NYCRR PART 621

621.5 Fees

(a) Applications for a permit shall be accompanied by a check or money order made payable to the "Department of Environmental Conservation" in the amount specified in paragraph (c) of this section. Payment in cash shall not be accepted.

(b) If an application is withdrawn before it is determined complete, the fee shall be returned to the applicant upon request.

(c) Fees for review of applications shall be as follows:

(1) Stream disturbance of bed or banks:

(i) non-minor projects: $25;

(ii) minor projects: $10.

(2) Dam Construction:

(i) Class A hazard: $10;

(ii) Class B hazard: less than 1,000 acres drainage area - $50; 1,000 acres or more - $100;

(iii) Class C hazard: less than 1,000 acres - $250; 1,000 acres or more - $400.

(3) Dock construction:

(i) docks on piles - $25;

(ii) docks on fill - $125;

(iii) minor projects - $10.

(4) Dredging and filling:

(i) 100 - 499 cubic yards - $15;

(ii) 500 - 1,999 cubic yards - $25;

(iii) 2,000 or more cubic yards - $50.

(5) Water supply: all projects - $50.

(6) Well drillers annual registration fee: corporation: $10; individual: $5.

(7) Permits for activities within the boundaries of designated wild, scenic and recreational river areas: fees not to exceed $50 will be adopted as part of rules and regulations to be adopted pursuant to title twenty-seven of article fifteen.

(8) In the case of an application for a SPDES permit:

(i) for the discharge of 1,000 gpd or less - $50;

(ii) for discharge of 1,001 - 10,000 gpd containing industrial waste - $100;

(iii) for discharge of 10,001 - 100,000 gpd containing industrial waste - $200;

(iv) for discharge of more than 100,000 gpd containing industrial waste - $300;

(v) for municipal sewage discharge of 1,001 - 10,000 gpd - $75;

(vi) for municipal sewage discharge of 10,001 - 100,000 gpd - $150;

(vii) for municipal sewage discharge of more than 100,000 gpd - $250;

(viii) for non-industrial - non-municipal discharge of 1,001 - 10,000 gpd - $50;

(ix) for non-industrial - non-municipal discharge of 10,001 - 100,000 gpd - $75;

(x) for non-industrial - non-municipal discharge of more than 100,000 gpd - $100.

(9) In the case of an application for realty subdivision approvals: $1 per lot (not to exceed $100) in addition to existing fee.

(10) Permits to Construct for new sources of air contamination which are not designated minor in section 621.12: $100 per source.

(11) Recertification of sources of air contamination which are not designated minor in section 621.12:

(i) $30 for a 3 year permit,

(ii) $20 for a 2 year permit, and

(iii) $10 for a one year permit.

(12) Certificates for the siting of liquefied natural and petroleum gas facilities: fees established in rules and regulations adopted pursuant to article twenty-three of the ECL shall not be affected by this Part.

(13) Mining permits: fee established in rules and regulations adopted pursuant to article twenty-three of the ECL shall not be affected by this Part.

(14) Freshwater wetlands:

(i) activities in wetlands of 20 acres or less in size - $25;

(ii) activities in wetlands of greater than 20 acres in size - $50;

(iii) activities in adjacent areas - $15;

(iv) minor projects - $10.

(15) Tidal wetlands:

(i) activities in coastal shoals, bars and flats, littoral zones, coastal fresh marshes, intertidal marshes and high marshes - $50;

(ii) activities in adjacent areas - $25;

(iii) minor projects - $10.

(16) Application for a Permit to Construct a Sanitary Landfill (which will include a Permit to Operate): $400.

(17) Application for a Permit to Operate a Sanitary Landfill:

(i) original application - $300;

(ii) renewal application - $100.

(18) Septic Tank Cleaner and Industrial Waste Collector Registration:

(i) for first collection vehicle - $25;

(ii) for each additional vehicle - $5.

(19) Permits for development in a floodplain: fees established in rules and regulations adopted pursuant to article thirty-six of the ECL shall not be affected by this Part.

(20) The fee for conceptual review shall be $500 with such fee credited towards established permit fees.

(d) When a project involves two or more applications which are to be reviewed concurrently for which fees are required, the fee charged shall be 80% of the total fees required or the highest single fee, whichever is greater.

D. Relationship of Uniform Procedures to SEQR Program

The State Environmental Quality Review Act (SEQR) requires that any agency of State or local government, when directly undertaking an action, funding an action, or reviewing an action for a license or permit determine whether that action may have a significant effect on the environment.

Under Uniform Procedures, actions which are determined to be major may require a statement of SEQR significance. Any project which is a SEQR Type I action will usually require a statement of significance. If a project is determined to be significant for SEQR purposes, an application under Uniform Procedures will not be deemed complete until a draft environmental impact statement, which meets the requirements of SEQR, is accepted by the lead agency. It will be the responsibility of the permit applicant to provide the draft EIS, which will be circulated for public comment, and will become a matter of public record, as well as being used by DEC in the permit review process.

It is the responsibility of DEC to develop rules and regulations which are of state-wide applicability. State and local governmental agencies have been given the option of adding any additional procedures to existing state SEQR regulations (6 NYCRR Part 617), necessary for full implementation of SEQR. In the case of DEC's own Departmental SEQR regulations (6 NYCRR Part 618), adoption of Coastal Zone Management plans has been included in the list of Type I actions requiring SERQ declarations or statements.

Environmental Impact Statements may be required during Conceptual Review of Projects

under Uniform Procedures. The purpose of SEQR is to insure that the environmental impacts of projects are considered in their earliest stages, at the time when any modifications which might be required can be accomplished with a minimum of delay and expense.

No unusual delays in Uniform Procedures are anticipated for projects which are significant for SEQR. Should DEC not be the lead agency for a major project which is significant for SEQR. Should DEC not be the lead agency for a major project which is significant for SEQR, the Uniform Procedures time clock will stop 35 days prior to the final decision date. Upon receipt of a final EIS from the lead agency, DEC will have 35 days in which to mail a decision to the applicant. Uniform Procedures does not extend the time limits for peojects significant for SEQR, for which DEC is the lead agency.

E. Relationship to Outside Review and Permit Activities

Since some permits may incorporate review and action by other agencies and levels of government, care must be taken to insure that there is coordination between these different offices and, more importantly, that all local governments delegated responsibilities issuing DEC permits are able to meet the strict time limits for processing permit applications under Uniform Procedures. Should any local government agencies, such as county health departments, be unable to meet deadline requirements under Uniform Procedures, DEC must step in and re-assume responsibility for issuing permits. This will insure the smooth and swift review of permits necessary under Uniform Procedures. All efforts will be made, however to accomodate and aid local governments in their permit issuance responsibilities.

The Uniform Procedures Act makes allowance for those permits for which DEC is not the lead agency. As mentioned earlier, the time clock will stop 35 days prior to the final decision date, and will be restarted upon receipt of the final EIS and any additional findings from the lead agency. Certain permits will require action at both the regional and central level. The program unit which issues the permit will be responsible for logging and monitoring to meet deadlines.

F. Specific Relationship to CZM Consistency Requirements and Certifications

Under Section 307 of the Federal Coastal Zone Management Act of 1972, as amended, an applicant for a federal permit or license affecting the coastal zone of the State must receive concurrence from the State coastal management agency that the proposed activity is consistent with the state's coastal zone program. Should the state object to the applicant's consistency certification, the federal goverment is unable to issue the permit or license. On the other hand, the federal government may deny a permit or license, for which the state had concurred with the applicant's consistency certification.

It is clear that many projects or actions reviewed for DEC permits under Uniform Procedures will also require federal permits or be receiving federal funding for which a coastal management consistency acknowledgement will be needed. The need for such consistency sign-off should be noted as part of DEC application completion review under Uniform Procedures.

The State Coastal Management Plan consistency review process should be integrated as much as possible into other coordinated project review and permit activities. In some instances this might be achieved through delegation by DOS of Coastal Management consistency review responsibilities to other state or local agencies. This is permissible under OCZM regulations.

III. Uniform Procedures Act and Its Implications

There are over 150 different types of permits required under various DEC resource management and environmental quality programs. These range from individual hunting and fishing licenses and special fish and wildlife management permits to permits for water supplies and waste discharges for major development projects and industries. While most kinds of licenses and permits are handled with very little delay, permits for major development-related regulatory programs have sometimes been slowed through need for multiple review by DEC and other levels of government, lack of adequate review information and, sometimes confusion by both government and applicants about what permits and reviews are required.

Consequently, the New York Legislature, as part of Governor Carey's legislative program for 1977 passed the Uniform Procedures Law which adds Article 70 to the ECL. The law establishes a new streamlined set of procedures encompassing the major regulatory permit programs within the Department. The law ensures comprehensive environmental review of projects while providing a specific time frame in which permit decisions must be made by DEC.

Specifically, the law does the following:

--establishes strict time limits for DEC review and decisions on permits;

--forces the automatic granting of permits on which DEC fails to act within specified deadlines; and

--authorizes the Department to collect application fees to meet the added cost of expedited permit review.

A. New Procedures for Permit Processing in DEC

It must be stressed that the Uniform Procedures Act applies only to the Department of Environmental Conservation and agencies to which DEC has delegated permitting authority. There are no obligations placed upon other state agencies or other levels of government to act within the time limits established in the law.

Previous internal attempts to streamline the department's permitting procedures have been hindered by the existence of a myriad of inconsistent, and sometimes conflicting, procedural requirements contained in the various statutes under which the department issued the permits in question. The new law establishes uniform administrative procedures to be applied to the department's major development-related permit programs, thus enabling the department to meet the new tight time deadlines. The law's provision for the automatic granting of permits if the department fails to meet the established time schedule insures applicants timely decisions.

In brief, the procedure to be followed requires that the department, within 15 days of receipt of an application, determine whether the project requires other DEC permits, whether the project requires an EIS for SEQR purposes, and whether the application is technically complete to commence review. If the department fails to notify the applicant of the status (complete/incomplete) of the application within 15 days of receipt, the application is deemed complete automatically. The department is required to publish a notice of complete application in the Environmental Notice

Bulletin and provide a copy of the notice to the chief executive officer of the municipality in which the project is to be located. The notice of complete application commences the formal review period.

If the application is for a permit designated "minor" in the implementing regulations (621.12), a decision must be made on it within 45 days; if the application is for a "non-minor" project the decision must be made within 90 days. Determination whether to hold a hearing must be made within 60 days and the hearing commence by the ninetieth day. Final decision for projects on which a hearing has been held must be made within 60 days of completion of the hearing record.

The law and regulations contain special provisions for conceptual review of large developments which entail major changes in land use. These procedures are designed to provide early comprehensive review of the environmental factors involved in the siting of major developments so that there can be more expedited review at a later stage. This process is desirable from the project sponsor's perspective since it gives him the benefit of early review on which to base his detailed planning, and desirable from the department's perspective since it affords the best opportunity to work cooperatively in the planning process to ensure decisions which are environmentally sound.

Most of the 26,000 applications which the department reviews each year are not for projects which require multiple permits, but are for projects which require only one permit. However, successful implementation of Uniform Procedures will require great coordination among all units of the department

and local governments to which permitting authority has been delegated in the initial determination of all permits required, and will require ongoing coordination and monitoring of the projects which require more than one permit. Ultimately this will result in more comprehensive review as well as more efficient review.

Because DEC's regulatory authority covers virtually all development activity in the state, the establishment and implementation of uniform procedures is a key step towards streamlining the whole federal-state-local regulatory process.

B. Permit Programs Covered

The provisions of Article 70 and the procedures contained in Part 621 (Uniform Procedures) apply to application for permits authorized by the following:

(1) Title 5 Article fifteen which authorizes the department to issue stream protection permits, permits for dams and docks, and permits for dredging or fill of navigable water;

(2) Title fifteen of Article fifteen which authorizes the department to issue approvals for water supply and certain Long Island water wells;

(3) Title twenty-seven of Article fifteen which authorizes the department to issue permits for certain land uses and activities within the river area established for designated wild, scenic and recreational rivers;

(4) Section 401 of federal Public Law 92-500 which authorizes the department to issue water quality certifications for federal projects requiring a federal permit;

(5) Title seven and eight of article seventeen which authorizes the department to issue State Pollutant Discharge Elimination System (SPDES) permits:

(6) Title fifteen of article seventeen which authorizes the Department to approve the sewage service for realty subdivisions;

(7) Article nineteen which authorizes the department to issue permits, certificates and approvals for the control of air pollution;

(8) Title seven of article twenty-three which authorizes the department to certify the siting of liquefied natural and petroleum gas facilities;

(9) Title twenty-seven of article twenty-three which authorizes the department to issue mining permits

(10) Article twenty-four which authorizes the department to issue permits for regulated activities in and adjacent to freshwater wetlands;

(11) Article twenty-five which authorizes the department to issue permits for regulated activities in and adjacent to tidal wetlands;

(12) Article twenty-seven which authorizes the department to issue permits to construct and operate solid waste management facilities, and to certify and register septic tank cleaners and industrial waste scavengers; and

(13) Article thirty-six which authorizes the department to issue permits and variances for development in flood hazard areas.

C. Fees

When the Legislature passed the Uniform Procedures Act,they established a list of maximum fees which may be changed for processing various permit applications. Any fees accepted by DEC are used to defray the additional costs incurred by the streamlined application and review process. In addition, any costs or expenses incurred as a result of a hearing shall be borne by the applicant. DEC will not collect Uniform Procedures Fees for those permits issued by local governmental units to which the Department has delegated complete authority for permit issuance. Fees are paid for the review of permit applications, and will not be reimbursed to the applicant should the permit be denied. Table A shows the fee schedule established in Uniform Procedure Regulations (6 NYCRR 621), adopted by DEC in November 1977.

TABLE A

FEE SCHEDULE FOR DEC PERMIT APPLICATION AS ESTABLISHED UNDER UNIFORM PROCEDURES ACT AND 6 NYCRR PART 621

621.5 *Fees*

(a) Applications for a permit shall be accompanied by a check or money order made payable to the "Department of Environmental Conservation" in the amount specified in paragraph (c) of this section. Payment in cash shall not be accepted.

(b) If an application is withdrawn before it is determined complete, the fee shall be returned to the applicant upon request.

(c) Fees for review of applications shall be as follows:

(1) Stream disturbance of bed or banks:

(i) non-minor projects: $25;

(ii) minor projects: $10.

(2) Dam Construction:

(i) Class A hazard: $10;

(ii) Class B hazard: less than 1,000 acres drainage area - $50; 1,000 acres or more - $100;

(iii) Class C hazard: less than 1,000 acres - $250; 1,000 acres or more - $400.

(3) Dock construction:

(i) docks on piles - $25;

(ii) docks on fill - $125;

(iii) minor projects - $10.

(4) Dredging and Filling:

(i) 100 - 499 cubic yards - $15;

(ii) 500 - 1,999 cubic yards - $25;

(iii) 2,000 or more cubic yards - $50.

(5) Water supply: all projects - $50.

(6) Well drillers annual registration fee: corporation: $10; individual: $5.

(7) Permits for activities within the boundaries of designated wild, scenic and recreational river areas: fees not to exceed $50 will be adopted as part of rules and regulations to be adopted pursuant to title twenty-seven of article fifteen.

(8) In the case of an application for a SPDES permit:

(i) for the discharge of 1,000 gpd or less - $50;

(ii) for discharge of 1,001 - 10,000 gpd containing industrial waste - $100;

(iii) for discharge of 10,001 - 100,000 gpd containing industrial waste - $200;

(iv) for discharge of more than 100,000 gpd containing industrial waste - $300;

(v) for municipal sewage discharge of 1,001 - 10,000 gpd - $75;

(vi) for municipal sewage discharge of 10,001 - 100,000 gpd - $150;

(vii) for municipal sewage discharge of more than 100,000 gpd - $250;

(viii) for non-industrial - non-municipal discharge of 1,001 - 10,000 gpd - $50;

(ix) for non-industrial - non-municipal discharge of 10,001 - 100,000 gpd - $75;

(x) for non-industrial - non-municipal discharge of more than 100,000 gpd - $100.

(9) In the case of an application for realty subdivision approvals: $1 per lot (not to exceed $100) in addition to existing fee.

(10) Permits to Construct for new sources of air contamination which are not designated minor in section 621.12: $100 per source.

(11) Recertification of sources of air contamination which are not designated minor in section 621.12:

(i) $30 for a 3 year permit,

(ii) $20 for a 2 year permit, and

(iii) $10 for a one year permit.

(12) Certificates for the siting of liquefied natural and petroleum gas facilities: fees established in rules and regulations adopted pursuant to article twenty-three of the ECL shall not be affected by this Part.

(13) Mining permits: fee established in rules and regulations adopted pursuant to article twenty-three of the ECL shall not be affected by this Part.

(14) Freshwater wetlands:

(i) activities in wetlands of 20 acres or less in size - $25;

(ii) activities in wetlands of greater than 20 acres in size - $50;

(iii) activities in adjacent areas - $15;

(iv) minor projects - $10.

(15) Tidal wetlands:

(i) activities in coastal shoals, bars and flats, littoral zones, coastal fresh marshes, intertidal marshes and high marshes - $50;

(ii) activities in adjacent areas - $25;

(iii) minor projects - $10.

(16) Application for a Permit to Construct a Sanitary Landfill (which will include a Permit to Operate): $400.

(17) Application for a Permit to Operate a Sanitary Landfill:

(i) original application - $300;

(ii) renewal application - $100.

(18) Septic Tank Cleaner and Industrial Waste Collector Registration:

(i) for first collection vehicle - $25;

(ii) for each additional vehicle - $5.

(19) Permits for development in a floodplain: fees established in rules and regulations adopted pursuant to article thirty-six of the ECL shall not be affected by this Part.

(20) The fee for conceptual review shall be $500 with such fee credited towards established permit fees.

(d) When a project involves two or more applications which are to be reviewed concurrently for which fees are required, the fee charged shall be 80% of the total fees required or the highest single fee, whichever is greater.

D. Relationship of Uniform Procedures to SEQR Program

The State Environmental Quality Review Act (SEQR) requires that any agency of State or local government, when directly undertaking an action, funding an action, or reviewing an action for a license or permit determine whether that action may have a significant effect on the environment.

Under Uniform Procedures, actions which are determined to be major may require a statement of SEQR significance. Any project which is a SEQR Type I action will usually require a statement of significance. If a project is determined to be significant for SEQR purposes, an application under Uniform Procedures will not be deemed complete until a draft environmental impact statement, which meets the requirements of SEQR, is accepted by the lead agency. It will be the responsibility of the permit applicant to provide the draft EIS, which will be circulated for public comment, and will become a matter of public record, as well as being used by DEC in the permit review process.

It is the responsibility of DEC to develop rules and regulations which are of state-wide applicability. State and local governmental agencies have been given the option of adding any additional procedures to existing state SEQR regulations (6 NYCRR Part 617), necessary for full implementation of SEQR. In the case of DEC's own Departmental SEQR regulations (6 NYCRR Part 618), adoption of Coastal Zone Management plans has been included in the list of Type I actions requiring SERQ declarations or statements.

Environmental Impact Statements may be required during Conceptual Review of Projects

under Uniform Procedures. The purpose of SEQR is to insure that the environmental impacts of projects are considered in their earliest stages, at the time when any modifications which might be required can be accomplished with a minimum of delay and expense.

No unusual delays in Uniform Procedures are anticipated for projects which are significant for SEQR. Should DEC not be the lead agency for a major project which is significant for SEQR. Should DEC not be the lead agency for a major project which is significant for SEQR, the Uniform Procedures time clock will stop 35 days prior to the final decision date. Upon receipt of a final EIS from the lead agency, DEC will have 35 days in which to mail a decision to the applicant. Uniform Procedures does not extend the time limits for peojects significant for SEQR, for which DEC is the lead agency.

E. Relationship to Outside Review and Permit Activities

Since some permits may incorporate review and action by other agencies and levels of government, care must be taken to insure that there is coordination between these different offices and, more importantly, that all local governments delegated responsibilities issuing DEC permits are able to meet the strict time limits for processing permit applications under Uniform Procedures. Should any local government agencies, such as county health departments, be unable to meet deadline requirements under Uniform Procedures, DEC must step in and re-assume responsibility for issuing permits. This will insure the smooth and swift review of permits necessary under Uniform Procedures. All efforts will be made, however to accomodate and aid local governments in their permit issuance responsibilities.

The Uniform Procedures Act makes allowance for those permits for which DEC is not the lead agency. As mentioned earlier, the time clock will stop 35 days prior to the final decision date, and will be restarted upon receipt of the final EIS and any additional findings from the lead agency. Certain permits will require action at both the regional and central level. The program unit which issues the permit will be responsible for logging and monitoring to meet deadlines.

F. Specific Relationship to CZM Consistency Requirements and Certifications

Under Section 307 of the Federal Coastal Zone Management Act of 1972, as amended, an applicant for a federal permit or license affecting the coastal zone of the State must receive concurrence from the State coastal management agency that the proposed activity is consistent with the state's coastal zone program. Should the state object to the applicant's consistency certification, the federal goverment is unable to issue the permit or license. On the other hand, the federal government may deny a permit or license, for which the state had concurred with the applicant's consistency certification.

It is clear that many projects or actions reviewed for DEC permits under Uniform Procedures will also require federal permits or be receiving federal funding for which a coastal management consistency acknowledgement will be needed. The need for such consistency sign-off should be noted as part of DEC application completion review under Uniform Procedures.

The State Coastal Management Plan consistency review process should be integrated as much as possible into other coordinated project review and permit activities. In some instances this might be achieved through delegation by DOS of Coastal Management consistency review responsibilities to other state or local agencies. This is permissible under OCZM regulations.

IV. DEC Project Review and Permit Programs

The Department of Environmental Conservation administers a wide variety of programs affecting use of the coastal zone. Some of these programs date back to the turn of the century, while others have only recently been enacted. Many of the most significant have been in effect for only a few years.

The function of the Department in these programs ~~also~~ varies. DEC has a review function for such programs as the State Environmental Quality Review Act (SEQR) and the Agricultural Districting Program, but in most instances the programs involve permit issuance. Among these permit programs are those for air and water quality, stream protection, tidal and freshwater wetlands, mined land reclamation and liquefied natural gas facilities.

In addition, DEC is involved in permit programs of other agencies. Prime examples of this are proceedings under Articles VII and VIII of the Public Service Law, which regulate siting of major utility transmission lines and major steam electric generating facilities.

The permit programs related to other state agencies are described in Chapter V. Those directly under DEC jurisdiction are described below.

A. State Environmental Quality Review

The purpose of the State Environmental Quality Review Act of 1975 (SEQR) is to introduce environmental factors, along with social and economic considerations, into the existing planning and decision-making processes of local and state governments. This is to insure that decisions can be made in a manner which protects and enhances environmental quality at the earliest possible time in the planning of a project. The enactment of SEQR makes New York the twenty-second state to have a state environmental assessment law of some kind.

The law requires, with some specific exceptions, that any agency of state or local government, when directly undertaking an action, funding an action or reviewing an action for a license or permit, determine whether that action may have a significant effect on the environment. If the decision-maker determines that it will not have a significant impact, a notice to that effect is placed on files as a matter of public record. If it is determined that the action may have a significant effect on the environment, the government agency is required to prepare or request the applicant to prepare a draft environmental impact statement (DEIS) which assesses the alternatives to the proposed action and the environmental consequences likely to result from the action.

The DEIS is then circulated for public comment, a hearing is held if the decision-maker deems it appropriate, and a final EIS is prepared which the decision-maker will consider in making a final determination. The law does not require disapproval of actions on which adverse impacts are disclosed, but that decisions be made which take into account the environmental impacts of a project as well as the social and economic factors which have been traditionally considered. In addition, environmental impact statements, if required, become part of the impact information necessary under DEC permit review procedures.

No new government agency was created through New York's law, although that approach was taken in many other states. SEQR is designed so that no agency or level of

government is given any new authority to review or approve the actions of other units of government. Nor is this a law through which responsibility is delegated from one level of government to another. SEQR requires that every agency of state and local government incorporate the consideration of environmental factors into all projects they directly undertake, fund or approve. This law requires that various agencies and levels of government cooperate together in the environmental review of projects, but it does not provide for a county or state agency to step in if local government does not fulfill its responsibilities.

Enforcement of SEQR is not relegated to a state administrative agency, instead it is enforced by the government agency directly responsible for the proposed action. Outside review of compliance with the law will be accomplished through the courts.

As a first step toward implementation of the law, the Department of Environmental Conservation has developed rules and regulations of statewide applicability (6 NYCRR Part 617). On the basis of these regulations, every state agency and unit of local government must adopt their own procedures necessary for their full implementation of the law. This provision of the law, allowing all agencies to adopt their own procedures, offers maximum flexibility in the law's implementation, and enables all agencies to integrate SEQR into their existing procedures, rather than to administer it separately.

In addition to the regulations providing moderately detailed administrative procedures for fulfilling the law's mandates, Sub-part 617.8 outlines the content of environmental impact statements and Sub-part 617.11 enumerates the general criteria to be used in determining what actions may have a significant effect on the environment.

Even greater guidance to implementation is given in Sub-part 617.14 which consists of two list of activities: those which will usually require an environmental impact statement (Type I), and those which will never require an environmental im-

pact statement (Type II). The largest activities, such as construction of an airport, will usually require an environmental impact statement; the smallest, such as maintenance of existing structures, are designated as never requiring an EIS. These lists are necessarily somewhat general in nature, containing only the activities at the two ends of the spectrum. State agencies and local governments are encouraged, in preparing their own procedures, to expand the lists of Type I and Type II activities and tailor the provisions to their individual needs, so long as those procedures are no less protective of the environment than Part 617.

In interpreting these two types of activities, several things must be kept in mind. The lists are not exhaustive, but contain only the two extremes. Most activities are in the "grey area" between Type I and Type II activities, and so significance must be determined on a case by case basis, taking into account the specific proposed project and its setting. 1977 legislative amendments delayed implementation of SEQR Table 1 below.

Table 1. Implementation schedule of the State Environmental Quality Review Act (SEQR)

Action Subject to SEQR	Effective Date of Coverage
All State Agency Direct Actions	September 1, 1976
Type I Funding Action by State Agencies Type I Direct Actions by Local Agencies	June 1, 1977
Type I Permit Action by State Agencies Type I Permit Action by Local Agencies Type I Funding Actions by Local Agencies	September 1, 1977
All State Agency Permit Actions All Funding Actions by State or Local Agencies All Local Agency Direct Actions	September 1, 1978

SEQR relates to all state and local government programs which result in, or control any form of development, land use change, or change in process which might affect the environment, whether they are publicly or privated initiated. Obviously, all planning related to such developments or changes is involved, at least indirectly,

B. Cumulative Impact Review

Cumulative impact review is an administrative mechanism presently in use by DEC that empowers the Commissioner to comprehensively review projects with diverse environmental impacts. 6 NYCRR Part 615 was adopted in 1972 based on summary powers granted to the Commissioner in 1970 under the ECL. After several legal challenges, cumulative impact review procedures were legislatively clarified in 1975 by the addition of Section 3-0301 b of the ECL.

An applicant can qualify for cumulative impact review simply by applying for a DEC permit, license, certification in, but not limited to one or more of the following areas:

1. air contamination source construction
2. public water supply approval
3. Long Island wells over 45 gpm
4. stream protection
5. municipal or industrial waste disposal system construction.

It is then up to the Commissioner to decide whether or not a cumulative impact review is necessary.

With the implementation of SEQR, the use of the cumulative impact review process has been very significantly reduced. It is not clear at this time how much this authority will be used in the future and the program may possibly just die out.

C. State Agency Capital Projects Review

A 1972 memorandum from the Division of the Budget to state agency heads established administrative procedures for DEC to conduct an environmental assessment of major state agency projects proposed for capital construction. These procedures were incorporated into the state budget preparation manual as Item 73. State agencies were required to submit to this process as a condition of gaining budget approval. However, since the implementation of SEQR, this review process has been eliminated.

D. Water Quality and Supply Regulation

The water quality and supply permit processes in New York are a major regulatory element of the Coastal Management Program, as well as a key portion of DEC's own project review and permit activities.

The explicit mandate of Section 307 (f) of the federal Coastal Zone Management Act is that the requirements of all water quality programs developed and administered by the state and federal government under PL 92-500 be the water pollution control requirements of the state Coastal Management program. Thus it follows that the water quality--and to some extent, water supply--regulatory programs of the state must be one-and-the same with those of the Coastal Management Program. DEC's own permit processes under the Uniform Procedures Act will be administered accordingly.

Similarly Coastal Management consistency reviews and other permit programs administered in the coastal area by governmental agencies other than the state water pollution control agency (DEC) must be consistent with the state water quality programs and regulations. In addition, Section 401 of PL 92-500 requires that the state certify for all federal licenses or permits for action which would result in discharge into navigable waters (by definition, nearly all waters of the state) that such actions comply with various sections of PL 92-500 related to maintenance of water quality.

It is essential therefore that there be close coordination between the water quality and supply permits issued by DEC through its own Uniform Procedures Act and all other permitting and certification processes. This applies statewide, but is especially so in the coastal area where Coastal Management Consistency Certification must incorporate water pollution control considerations.

Project review and permit processes in the Coastal Management Area, administered at all levels of government must be coordinated with state water regulation and review actions carried on under the following laws which for the most part are sections of the Environmental Conservation Law (ECL).

1. Approval of Public Water Supplies (ECL Article 15, Title 15)

This law tracing back to Conservation Law of 1905 and 1911 applies to either ground or surface water supplies distributed by municipalities, public or private corporations or individual entrepreneurs. Additions to existing sources and extensions of existing distribution systems are covered along with totally new systems. The only exception is the extension of a municipally operated supply wholly within that municipality.

There are no minimums set in the law with respect to the number of people who may be served or quantities of water which may be withdrawn from sources of supply. The law reads: "...any person...supplying or proposing to supply the inhabitants of any part of the State...". This implies that single lot supplies developed by individual property owners for their own use also might be included. However, the law traditionally has been interpreted in the way in which the 1905 Legislature undoubtedly intended; that is, as a control over any organization or individual proposing to take large quantities of water and/or distribute water to others.

ECL Article 15, Title 15, has applied only to the supply of potable water to the public; individual home, industrial or commercial takings are not subjected to DEC permit procedures. Such takings are generally not of sufficient quantity to make them a resource depletion problem (Long Island is an exception and is covered in a special section of Title 15). Direct agricultural takings of water for irrigation are not regulated under this program.

DEC must consider whether the proposed water supply application is justified by public necessity and whether the water supply plans of the petitioner provide for proper sanitary regulation of the watershed and protection of the supply. DEC must also determine if a proposed taking would be determental to other adjacent public and private water supplies.

Within the state coastal management area, DEC water supply law is not apt to have much impact on small scale development or development in existing water service

areas. Water supply permits however can be major considerations in large scale development proposed for those unbuilt sections of the coastal zone which have no existing public water systems. The incidence of such permit applications will be infrequent in the coastal area. For the entire state, only about 140 water supply applications are processed annually.

2. Potability of Public Water Supplies (PHL Article 11 Title I)

While DEC approves the establishment or modification of public water supplies--that is, the taking of water--the State Health Department, based on laws dating back to 1885, is empowered to adopt rules and regulations for the protection of such supplies from contamination.

In the case of New York City water supplies, such rules can be made by city authorities subject to the State Health Commissioner's approval; other water suppliers throughout the state may adopt model or special regulations for the protection of their specific supplies. There are more than 220 such regulations in effect. All water suppliers, municipal and private, are empowered to inspect the source of their supply to see that regulations for the prevention of its contamination are being followed.

As in the case of DEC public water supply approvals, incidence of need for new potable water supply protection regulations is not apt to be frequent in the coastal zone. However, the administration of present regulations applies to many existing supply systems along the coast and should be incorporated into other reviews by county health departments and other agencies at state and local level. More information on review and permit practices of the state and county health departments is included in other sections of this report.

3. Water Supplies in Realty Subdivisions (PHL Article 11, Title II)

Under this section of Public Health Law and ECL Article 17, Title 15 (covered below) supported by 6NYCRR Part 653, a "subdivision" is defined as five or more parcels for sale or rent as residential building lots; no maximum or minimum lot sizes are specified.

City, county or part-county health departments may adopt regulations to guarantee that water supplies to subdivisions will be installed in accord with approved plans. (Of New York's 28 coastal counties, twenty two have health departments and eighteen enforce subdivision regulations). No subdivision may be sold or leased, or a plot plan thereon filed, without approval by the city, county or part-county health department, or in lieu of, by the State Department of Health.

Under 6NYCRR Part 653, a community water supply is required if:

- the subdivision is in or near an existing or approved planned water district;
- individual wells do not yield at least 5 gpm;
- the subdivision is 50 lots or more or contains 200 or more residents;
- groundwaters are non-potable.

(City and county health departments can, if they wish, enforce more stringent regulations.)

If a community water supply is necessary, provisions of PHL Article 11, Title I and ECL Article 15, Title 15 regarding adequacy and quality of community water supplies (discussed above) must apply.

Where individual water supplies are allowable, or where the development is within the approved service area of an existing community supply, the development is not likely to be reviewed by DEC unless there is need for Department approval of a sewage disposal system or wastewater discharge under the State Pollutant Discharge Elimination System (SPDES). If the water supply is to be operated by a private corporation--say the developer of a subdivision--a transportation corporation must also be set up under Article 10 of the Transportation Corporations Law, through the New York Department of State, to operate the pipe system subject to local approval of rates or charges.

Review and permits for subdivisions in and near the state coastal management area are apt to be a very common review activity. Because of delegation to county health departments, great care must be taken to ensure that such reviews are coordinated with others carried out by DEC directly. There is further discussion of the

administration of this program elsewhere in this report in sections on the state Department of Health and on local government (county) review.

4. Sewage Services in Realty Subdivisions (ECL Article 17, Title 15)

The same definition of "subdivision" applies under this law as in the preceding law on water supplies in real estate subdivisions (five or more lots for residential use). City, county or part-county health departments may adopt regulations to guarantee the installation of sewage disposal facilities in subdivisions in accord with approved plans. Conditions for State or National Pollutant Discharge Elimination Permits must also be met.

No subdivision may be sold or leased, or a plot plan thereon filed, without approval by the city, county or part-county health department, or in lieu of, by the State Department of Environmental Conservation. By specific memorandum of understanding, subdivision sewage systems, both with respect to sewage treatment and collection, may be reivewed and approved directly by city, county or state health departments for DEC. Approval of sewage systems, including treatment facilities is handled in DEC primarily through its regional offices where authroity has been delegated to local health agencies showing competancy to administer the program. This also includes issuance of ground water discharge permits under SPDES. While DEC Division of Pure Waters retains permit issuance authority for NPDES surface discharge permits, such permits for subdivisions may be drafted in Department regional offices.

Part 653 of 6NYCRR applies to subdivision review for sewage facilities (ECL Art. 17, Title 15), as well as to water supplies (PHL Art. 11, Title II). Under it, a community sewerage system has been required if:

- the subdivision is in or near an existing or approved planned sewer service area;
- soil percolation rates are slower than 60 min/in or there is insufficient non-impervious soil to construct an adequate leaching system;
- the subdivision is 50 lots or more, or contains 200 or more residents.

Individual sewage disposal and water supply systems on the same lot require a minimum

lot size of 20,000 square feet.

If a community sewage system is needed, plan approval is required from DEC, district offices of the State Department of Health, or from city or county health departments if they have an approved reivew system. If a community sewage system is necessary wherein there will be effluent discharge to the surface or groundwaters of the state, a NPDES or SPDES discharge permit will be required under Section 402 of PL 92-500 or under EPL Article 17, Title 8 (described below).

If the sewer system is to be operated by a private corporation--say the developer of the subdivision--a transportation corporation must also be set up under Article 10 of the Transportation Corporations Law, through the New York Department of State, to operate such a pipe system, subject to local approval of rates or charges.

Since this portion of the Environmental Conservation Law is intended to be administered in parallel fashion to the subdivision water supply regulations based on State Health Law, special attention must be given to the way in which these regulations, which are frequently delegated outside DEC, can be carried out under the New Uniform Procedures Act. Such delegation must now be subject to scrutiny and recall, if Uniform Procedures timetables cannot be met.

5. State and National Pollutant Discharge Elimination Systems--SPDES/NPDES (ECL Article 17, Title 8)

6NYCRR Parts 750 through 757 conform to federal requirements under Section 402 of PL 92-500; thus DEC has been empowered to issue all future effluent discharge permits under SPDES, replacing the permit issuing process (NPDES) administered directly by EPA in NYS from 1973 to November, 1975.

SPDES permits are required of all parties who propose to (or in the case of the initial implementation of the program, actually are) discharging pollutants into the waters of the state. Discharge permits may be issued for up to five year periods and are renewable; they specify effluent limitations and standards, establish compliance schedules and specify required monitoring. Permits may be modified, suspended or revoked after issuance, if good cause is shown. At the discretion of the Commissioner

of Environmental Conservation, a public hearing may be held on a SPDES permit application; hearing costs must be borne by the applicant.

All point sources of discharge are covered; public or private sources, residential, commercial or industrial, including municipal or community sewage treatment facilities. For SPDES purposes, "waters of the state" includes groundwater, hence septic and other underground discharge systems are covered.

The definition of "subdivision" differs from the state realty subdivision review laws under ECL Article 17, Title 15 and PHL Article 11, Title II (6NYCRR Part 653--see b. and c. above). Under SPDES, a subdivision is five or more parcels, each of which is less than ten acres, for sale or rent, for any purpose which may involve disposal of sewage into the waters of the state (surface or ground) other than from a community system. The definition under ECL Article 17, Title 15 and PHL Article 11, Title II is limited to residential use (except in Suffolk Co.), and no maximum lot size is specified.

Section 751.1 of 6NYCRR Part 751 specifies that the "...sale or rental of parcels from a subdivision by a person who has divided such parcels shall be considered to cause a discharge." Thus SPDES permits are required for both residential and non-residential uses, and for aggregates of five or more individual lots at the time of their rental or sale. For example, five or more lots served by septic tanks discharging into groundwaters is classified as a "point source" under SPDES.

Excepted from the SPDES regulations are individual point sources or outlets (five or more together would be a "subdivision" covered as described above) discharging less than 1000 gallons/day of non-commercial or non-industrial effluent into groundwaters of the state from private dwellings housing less than three families. Any surface discharge from such private dwellings would continue to be covered under SPDES. Also excepted is uncontrolled storm water runoff, if not contaminated by industrial or commercial activity.

Specifically prohibited from receiving permits under any circumstances are certain

specified radio-active, biological or chemical wastes of very hazardous nature, and all point sources discharges which are in conflict with approved Section 208 areawide waste treatment management plans.

That part of the SPDES permit program regarding surface discharges fulfills the requirements of the National Pollutant Discharge Elimination System (NPDES). It has been delegated to state administration and cannot be delegated further. Effective April 1, 1976, DEC administration of SPDES permits for groundwater discharges has been transferred from Albany to DEC regional offices where in some cases, it has been delegated to local health offices.

6. State Water Quality Certifications Issued Under Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) Section 401

Section 401 of the Water Pollution Control Act Amendments of 1972 (PL 92-500) requires that applicants for licenses or permits from any federal agency to conduct activities which result in discharges into navigable waters, must provide certification from the state that such discharges comply with various sections of PL 92-500 related to maintenance of water quality. Federal permits covered by this section are mostly those issued by the Army Corps of Engineers for dredging and dumping, by EPA for certain wastewater discharge actions, and by the Nuclear Regulatory and Federal Energy Regulatory Commissions with respect to certain types of energy facilites.

The relationship of Section 401 Certification to these federal permit programs is discussed at greater length under the subsection on federal review and permit programs in Chapter V of this report. It should be noted that under the State Pollutant Discharge Elimination System (SPDES), those discharges covered by the federal program (NPDES) are subject to Section 401. Consequently, DEC permit issuance under SPDES, and the certification of SPDES discharges under 401 are administered basically as part of the same process within the Division of Pure Waters. Other 401 Certification related to Corps of Engineers permits and energy facility siting permits are handled by various units of DEC's Office of Environmental Analysis and Permits.

E. State Air Quality Programs

State air quality programs are conducted under the umbrella of the federal Clean Air Act. A major goal of the 1970 Clean Air Act Amendments was to achieve and maintain national ambient air quality standards for key contaminants: particulates, sulfer dioxide, nitrogen dioxide, oxidants, carbon monoxide and hydrocarbons. Primary and secondary standards have been promulgated for these pollutants by the U.S. Environmental Protection Agency. The mechanisms for achieving the goals of the Clean Air Act include a braod array of plans, programs and regulatory actions with powers and responsibilities delegated from the federal government to the states. The Department of Environmental Conservation is the designated state agency responsible for air quality programs.

To achieve the national ambient air standards, states were required to produce Implementation Plans. The thrust of New York State's strategy to achieve the standards has been based primarily on implementation of regulations to reduce emissions from existing major stationary sources of pollution such as major industrial plants, fossil fuel electric generating facilities and municipal incinerators. In the New York metropolitan area, where motor vehicle emissions are a significant problem, a separate Transportation Control Plan (TCP) was required. The TCP was developed by state and city agencies, with DEC in the lead role.

Several DEC permit programs are in effect to implement air quality measures. A Permit to Construct must be obtained before a source of air pollution can be built, installed or modified. Applicants must provide proof that the source will not violate air quality standards or any of the state emission regulations that apply to that particular facility. If the source is constructed according to approved plans and if no operational problem is perceived, then a Certificate to Operate may be issued. The applicant must

prove that the operation of the source will not contravene air quality standards and will be operated in accordance with the established emission limitations outlined in Rules and Regulations. The certificate must be renewed every three years, ensuring periodic review.

Some aspects of the state air quality program may be delegated to local governments. New York City has been delegated certain permit and monitoring programs. Other local governments have been delegated parts of the air quality program on a selective basis.

Permits are also required for indirect sources of air contamination. These are primarily facilities, such as highways, shopping centers, parking lots and airports, generating associated vehicular or aircraft traffic that may degrade ambient air quality. The size and location of the indirect source determine whether its construction come within the scope of the regulations.

Under recent federal court decisions and the 1977 Amendments to the Clean Air Act, revisions to State Implementation Plans are required. These revisions must include measures to: prevent significant deterioration of air quality in all "clean air areas" of the state; to attain standards in current non-attainment areas, including the New York Metropolitan area and other coastal areas; and to ensure that the growth and development of the state will not affect the maintenance of standards over time.

DEC, with the participation of other state and local agencies has initiated major planning, regulatory and management programs to achieve mandated federal clean air objectives. In some instances, achieving the objectives may require regulatory mechanisms that restrict pollution sources (large facilities and the agglomeration of smaller activities) from certain locations in the state, including some coastal areas.

Until recently, the focus of the state's air quality program was almost entirely on stationary pollution sources. New federal requirements have

led to an expansion of this focus to include greater emphasis on land use issues. This expansion increases the need to coordinate air quality permits and programs with other state and local permits and programs.

The air quality maintenance planning process that is now underway is the first instance of major statewide involvement of regional and local agencies, other than local health departments, in the state's air pollution control program.

Additional inter and intra governmental coordination will be required in further revisions of the State Implementation Plan in order to meet federal requirements. A special effort will be required to consolidate objectives of the air quality program with the state's coastal management program because of the potential for interaction of land use controls. Lack of appropriate coordination between these programs could result in the air pollution control program having detrimental impacts on the ability to achieve coastal management objectives. While not widespread, this could occur in important coastal regions where explicit or implicit strategies under the air quality program could conflict with Coastal Zone proposed land and water uses. With proper coordination, however, the air quality management program could be utilized effectively to support coastal management objectives.

F Stream Protection

Article 15, Title 5 of the Environmental Conservation Law is the state statutory authority which establishes the Stream Protection Program. The objectives of this program include:

1. to minimize disturbances to the beds and banks of certain streams in order to protect fish and wildlife and their habitat;
2. to protect water rights of property owners along rivers, streams, lakes and other water bodies;
3. to protect navigable waters through control of dredging and filling and placement of dams and docks; and
4. to provide for public safety through investigation of the condition of existing dams, piers and docks.

The responsible program unit within DEC is the Office of Environmental Analysis and when necessary, the Office of Legal Affairs and Law Enforcement. Primary administrative responsibility rests with the regional supervisors of environmental analysis assisted by biologists and engineers.

The stream protection law regulates activities affecting the beds and banks of protected streams (all streams with water classifications or standards of AA, AA(T), B, B(T), and C(T)), excavation and filling in navigable waters, and construction of certain dams and docks, and requires removal, replacement or repair of illegal or unsafe structures, fills or excavations.

The discharge of dredged or fill material into navigable waters also requires a permit issued by the Army Corps of Engineers pursuant to Section 404 of the Water Pollution Control Act of 1972. This federal permit program closely parallels the State Stream Protection Permit Program. There is close coordination between the Army Corps District Offices and the DEC Office of Environmental Analysis and Permits when an activity requires both permits. The section 404 permit program is

described in more detail in Chapter V, Part A - Federal Programs.

Upon receipt by DEC of an application to undertake a stream disturbing action or structure, notice must be published and written objections may be filed. Subsequently, the DEC Chief Permit Administrator may determine that a public hearing is necessary before rendering a decision on the application.

Because the law is so all-inclusive, the activities of farmers and other rural landowners, as well as land developers, may be subject to its provisions. State agencies and state public corporations are excluded from provision of the stream protection law, but are encouraged to enter into memoranda of understanding with DEC in lieu of the law's district application. Other public corporations and all municipalities are required to obtain permits for public projects, unless they enter into memoranda of understanding with DEC which spell out conditions under which they may be responsible for overseeing certain aspects of their own stream disturbing actions. Several hundred such municipal memoranda have been executed with DEC.

All applicants under the stream protection law must provide for public notice of their proposed action. (at the discretion of the D.E.C. local permit agent, such publication may be waived for minor projects.) When a notice is published, a time is set for the filing of written objections by the public. The DEC Chief Permit Administrator may determine a public hearing on the action may be desirable. After public notice, scheduling such a hearing and giving opportunity for further written objection, the Chief Permit Administrator may then decide whether or not to procede with the hearing. Thus there are several opportunities for public participation in Departmental decisions regarding the stream protection law.

This is a permit program which will be of considerable importance to implementation of a CM program since many of the permits deal directly with activities proposed

in that portion of coastal areas designated as the coastal zone for management purposes. Primarily, the requirement for permits will be an important element of the CM program by making it possible to control proposed activities such as fills and excavations which are deemed undesirable in certain geographic areas of particular concern (GAPC) that are designated for protection or preservation. Also, this program will be one means of controlling and regulating permissible land and water uses when these are identified for the coastal zone.

G. Tidal Wetlands

The Tidal Wetlands Program, established by the Tidal Wetlands Act of 1973, is designed to preserve and protect the tidal wetlands of New York State. These wetlands are found in New York City, Suffolk, Nassau, Westchester and Rockland Counties. The program has three main elements: a moratorium regulatory program, an inventory of the wetlands, and a permanent regulatory program.

Between September 1973 and September 1977, during the development of final tidal wetlands maps and regulations, anyone wanting to alter a tidal wetland or any adjacent area up to a maximum of 300 feet from a tidal wetland has to apply for a moratorium permit under 6 NYCRR Part 660 administered by the Department's Office of Environmental Analysis. The applicant must have demonstrated both that the moratorium was causing a hardship and that the proposed alteration was not contrary to the policy and provisions of the wetlands law. The overwhelming majority of applications have been for projects adjacent to the wetlands and did not have any significant impact upon them.

In some instances public hearings were held on the permit application before a decision was reached. Some moratorium permits which were issued contained conditions to prevent or minimize any adverse impacts on the wetlands.

After the maps, which are developed from aerial photos, were field checked, hearings were held to allow public comment. Following corrections, approximately 730 photomaps were filed during September 1977 with the appropriate county clerk or city official as part of the permanent regulatory program. The maps may also be seen at DEC Regional Offices, and copies will be available by December through a private printing contractor. An additional 39 photomaps are presently under correction but are expected to be filed in the near future. Tidal wetlands maps cover the entire State Marine District under the jurisdiction of the Division of Marine & Coastal Resources, extending up the Hudson to the Tappan Zee Bridge.

Upon local filing of the maps, the permanent regulatory program became effective and replaced the moratorium permit program in all areas except those few where maps are not yet complete. The permanent regulatory program is based on a detailed set of rules and regulations (NYCRR Part 661) keyed to the six wetlands classifications shown on the wetlands photomaps and to the adjacent areas.

The rules and regulations identify the natural functions, relative importance, and gragility of each of the six wetland classifications. The use guidelines for each wetland classification are determined by the compatibility of the proposed activity "with the preservation, protection, or enhancement of the present or potential values" of the wetlands. Generally, regulated activities include any form of draining, dredging, excavation, dumping, filling, construction, pollutant discharge, or any other activity which directly or indirectly may substantially alter or impair the natural condition or function of a tidal wetland. Unlike the Freshwater Wetlands Program, there is no minimum size requirement for a tidal wetland below which it would not be covered in the regulatory program.

Sub-part 661.5 of the Final tidal wetlands regulations identify four categories of uses in wetlands and adjacent areas. Generally compatible uses are activities such as restoration or reconstruction of existing functional structures, maintenance dredging and construction of mosquito control ditches. Examples of incompatible uses include disposal of any chemical or toxic material and the use or application of any chemical petro chemical or other toxic material including any pesticide where not authorized by law. Presumptively incompatible uses are uses such as dredging and construction of commercial or industrial use facilities not requiring water access. Non-regulated uses are activities such as boating, hiking, swimming or other non-motorized forms of recreation.

Generally compatible uses require a permit or a notification letter to DEC. Incompatible uses (the types of uses which the Department will always oppose) and presumptively incompatible uses (those which it may oppose) require a permit.

Non-regulated uses do not require a notification letter or permit. Procedures for public hearings are established as to scheduling, conduct, location, who may testify, and other matters. Following the hearing, a permit may be denied, or issued with provisions and conditions to minimize or eliminate any adverse effects on the wetlands.

The Commissioner of Environmental Conservation is required to confer with local government officials after completion of the inventory to establish a protective program for the tidal wetlands. This program may include cooperative agreements between DEC and local municipalities to further the purposes of the Act, including the payment of the entire cost of preserving, maintaining or enhancing tidal wetlands. The Environmental Quality Bond Act provides $4 million for assistance in restoring wetlands under municipal ownership.

Because the effectiveness of the overall State Coastal Management Program will depend to a large degree on the specific individual management programs from which it will be prepared, the Tidal Wetlands Program will play a major role in the management phase of the overall program. Tidal wetlands mapping was a major work element in the First Year Coastal Management Program. At present, the Tidal Wetlands Program is probably the most significant coastal management mechanism to protect New York's marine coastline. Of the 3108 total miles of New York coastal shoreline approximately 1600 miles are subject to regulation under the Tidal Wetlands Program. The total area of tidal marshlands is estimated at approximately 25,000 acres (10,000 hectares). The total land use impact of the program is consequently greater than this, because most areas within 300 feet of the wetlands are also regulated, with the regulations placing limitations on densities and land uses.

One of the key elements to be used in the management phase of the overall Coastal Management Program (CMP) is the designation and management of Geographic Areas of Particular Concern (GAPC). All tidal wetlands will be designated as a generic type GAPC. The management of GAPC's requires that a system for regulating land

and water uses or activities in each GAPC be established. This regulatory framework for tidal wetlands GAPC's already exists through the State's Tidal Wetlands Program.

There is a clear interrelationship of the tidal wetlands program with local land use controls. Several localities have already recognized the value and benefits of tidal wetlands in their zoning for wetlands and adjacent areas. The Tidal Wetlands Law specifically allows for tax assessment of wetlands based on uses allowable under DEC regulations. The management of such lands for their intrinsic natural values raises some questions with respect to their relationship to overall land values and the total local tax base.

The Tidal Wetlands Program is administered entirely by DEC. The majority of administrative functions are handled at the regional level in DEC Regions 1, 2 and 3, the only regions containing tidal wetlands. Office of Environmental Analysis and Permits personnel in the central office is primarily involved with budgeting and major or special activities affecting wetlands. Most of the tidal wetland work is handled in the DEC Region 1 Office (Nassau and Suffolk Counties). Since September 1973, during the moratorium and initial stages of the permanent regulatory programs, approximately 3000 permit applications have been processed in Region 1, 400 in Region 2 and 35 in Region 3.

A new bureau of Tidal Wetlands and Marine Mammals has recently been formed within DEC to administer the Tidal Wetlands Program. This unit is responsible for the management, acquisition and inventory of wetlands but not permit issuance. The issuing of permits is administered by the Supervisors of environmental analysis in the DEC Regional offices.

Staffing has been a continuing problem, with too few personnel in the DEC regional offices available to handle the substantial volume of permit applications. However, the 1978 Commissioner's Budget request provides some funding for increased staffing. Approval of New York's Coastal Management Program will make the state eligible for

federal administrative grants under Section 306 which could augment such State funds in order to overcome initial program backlog.

H. Freshwater Wetlands

The objective of the Freshwater Wetlands Program, established by the Freshwater Wetlands Act of 1975, (Article 24 of the Environmental Conservation Law) is to regulate the use and development of the state's freshwater wetlands to protect and preserve the natural benefits to be derived from them. This regulation and management is to be consistent with the general welfare and beneficial economic and social development of the state.

The Freshwater Wetlands Act provides for the regulation of all freshwater wetlands in the state over 12.4 acres (5 hectares) in size, as well as smaller wetlands deemed of unusual local importance by the Commissioner of Environmental Conservation. Activities on adjacent areas within 100 feet of the vegetative boundary of the wetland are also regulated. The program has three major components, an interim permit program, an inventory of wetlands, and a permanent permit program.

DEC has primary state agency responsibility for the program statewide, except for the Adirondack Park. The interim permit program is administered by DEC statewide. The law provides that administrative authority for the permanent permit program may be adopted by local governments acting within state management guidelines.

The state's interim permit program went into effect September 1975, and is administered by DEC regional permit administrators under regulations adopted June 1976 (6 NYCRR Part 662). While it is in effect, no one may conduct a regulated activity (such as draining, dredging, filling, constructing or polluting) in a wetland or adjacent area without obtaining an interim permit. On request, DEC will determine whether or not a particular area is a wetland subject to regulation.

If a permit is required, the applicant must publish a notice of his or her application in two local newspapers. A public hearing may be required if there are objections or if DEC determines that it is necessary. In granting, denying or limiting any permit, consideration is given to the effect of the proposed activity

on the natural functions and values of the wetland. The activity must be consistent with the policy to preserve, protect and conserve freshwater wetlands. There are special exemptions from the law for routine agricultural operations (including draining but not filling), for public health operations and for harvesting of the natural faunal and floral products of wetlands.

The inventory identifies and maps all wetlands as determined by their vegetative covertypes, down to .5 acre in size. Black and white spring and summer photography is used by photointerpreters to delineate freshwater wetlands and map them on transparent overlays of 7.5 minute U.S. Geological Survey topographic maps. The preliminary draft maps of all coastal freshwater wetlands were completed in May 1977. The preliminary draft mapping should be completed statewide by spring 1978.

These draft inventory maps are then field-checked on a county-county basis, information from any existing locally-produced maps is incorporated, and a tentative map is prepared for each county. After all identified wetland owners have been notified by certified mail, a public hearing is held in each county on whether revisions to the map are needed. After the hearing, the map is modified as necessary and then copies of it are filed with the appropriate local governments.

The permanent regulatory program goes into effect in each county when the inventory is completed for that county and copies of the map are filed with the local governments. Cities, towns and villages have the first option to adopt a local wetlands protection law or ordinance which is at least as restrictive as regulations developed by DEC pursuant to the Freshwater Wetlands Act. If this is done, the regulation of wetlands within the boundary of the local government will be administered at that level, with DEC providing technical guidance on a fee basis. The Department also will monitor local implementation to assure compliance with the provisions of the law.

In the event that a city, town or village does not wish to participate, or does not have the technical capacity, or fails to implement the program effectively, the county will have the opportunity to formulate a program. If the county decides not to do this or does not operate the program pursuant to the Act, the regulation must be assumed by DEC. In the event that a wetland is located in more than one political entity, each government body which has the administrative responsibility will regulate that portion of the wetland located within its bounds.

1977 legislative amendments to the Act have extended the deadline for local governments to implement wetlands protection laws or ordinances. Cities, towns and villages are to implement this legislation by the date the applicable final wetlands map is filed by DEC. Where any of these governments decides not to be the regulatory authority the applicable county has 90 days from that map-filing date within which to implement legislation. A local freshwater wetlands protection law or ordinance may be adopted and implemented before the filing of the final wetlands map, but the regulatory authority under the Act remains with DEC and the interim permit program remains in effect until the applicable final map is filed. Furthermore, the latest amendments allow any local government which defaults or transfers its authority to the county or state to recover such authority at any time by adopting a freshwater wetland protection law or ordinance consistent with the Act.

As of November 1977, approximately 400 local governments in the state have adopted freshwater wetland protection laws or ordinances. Many more of the 1600 local governments in the state may choose to adopt and implement legislation pursuant to the Act when DEC files final maps for their areas. As of November 1977, public hearings on tentative wetlands maps have been held only in Albany and Ulster Counties and no final maps have been filed in any part of the state.

To help ensure management of wetland resources, the law provides for cooperative agreements between DEC and any city, village, town or county or with an owner of

any freshwater wetland for the purpose of preserving and maintaining them in their natural state. Any such agreement with a local government to preserve, maintain or enhance a wetland may include provision of DEC personnel, facilities or funds.

The law provides that wetlands subject to land use regulations or subject to cooperative agreements shall be assessed, for the purposes of tax evaluation, on the allowable uses remaining.

A special appeal and review process through a Freshwater Wetlands Appeals Board is set up in the law. The board consists of five members. Two members each are designated by the Commissioner of DEC and Agriculture and Markets. The chairman of the Board is selected by the Governor and must be an attorney. The appeals board has ultimate authority concerning decisions by the Commissioner of DEC or any local government. Further review of decisions is available through judicial proceedings under Article 78 of the Civil Practice Law and Rules.

The Freshwater Wetlands Program will also be one of the primary management mechanisms to be used in the management phase of the overall Coastal Management Program. A freshwater wetland generic type GAPC will be established for all freshwater wetlands within the coastal zone identified by the state program. Here again, rules, regulations and permit procedures which should be in permit procedures which should be in place at the time the management phase is effectuated will be of benefit in establishing legal authorities and management procedures for certain GAPC's.

One of the potential administrative problems in the implementation of the permanent permit program is the confusion which may exist on the part of affected landowners on which level of government has jurisdiction over a particular wetland or portion of a wetland. Wetlands may be regulated by either the city, town, village, county or state level of government. A landowner may have adjacent wetlands, which are separated by a political boundary, under the regulation of two levels of government. Even a single wetland may have different portions of it regulated by different levels of government, if it is located in two different political units.

I. Wild, Scenic and Recreational Rivers

The State Wild, Scenic and Recreational Rivers System was established in 1972 to preserve and protect the outstanding natural, scenic, historic, ecological and recreational values of selected free flowing rivers and their immediate surroundings. The program identifies three classifications of rivers: wild, scenic and recreational. Under the law, wild rivers are to be free of diversions and impoundments and inaccessible to the general public except by water, foot or horse trail; their immediate environs are to remain primitive and undeveloped, with development limited to forest management and foot bridges. Scenic rivers are to be free of diversions and impoundments except for log dams, with limited road access and with river areas largely primitive and largely undeveloped or which are partially or predominantly used for agriculture, forest management and other dispersed human activities. Recreational rivers are to be easily accessible by road or railroad, may have development in their river area and may have undergone some impoundment or diversion in the past.

The law establishes procedures for the designation and administration of rivers under the program. DEC is required to make studies and recommendations to affected counties and municipalities and certain State agencies of rivers to be proposed for designation before submission to the Governor and the Legislature for adoption or modification. DEC has emphasized public involvement, especially for landowners and local governments, in the studies and in the designation proposals, because the program will have significant local impacts.

The law also gives DEC authority to exercise land use controls in designated river areas. Draft program guidelines have been prepared setting forth suggested management standards. Management programs for designated areas will include the establishment of detailed boundaries and the development of state and local rules and regulations for management of land and water resources.

It is the department's intent to delegate as much of the program as practical to local governments, providing they demonstrate the ability and willingness to meet minimum management standards. The key to local administration of land use and other management controls in designated river areas is local state cooperation and action through appropriate management devices such as local codes, zoning and landowner agreements. To facilitate this cooperation and action, the DEC draft guidelines call for the appointment by the Commissioner of the Department of Environmental Conservation of local management advisory committees to assist the department in the development and implementation of management programs. These committees include people who served on the local advisory committees during the study process.

Within the state's coastal management area are two rivers designated as scenic and recreational within the system; seven miles of the Connetquot River (recreational) in the Connetquot River State Park, and eight miles of the Carmans River (3 sections scenic, 2 sections recreational). Both rivers are within Suffolk County. Additional sections of the Connetquot, as well as the Nissequoque and Peconic Rivers, also within Suffolk County, are being considered for possible study and designation. There are a total of 1228 miles of designated rivers statewide. Of this mileage, 1199 miles are located within the Adirondack Park. Of the 29 miles of designated rivers outside the park, 15 miles are coastal zone rivers.

Three other coastal zone counties - Albany, Greene, and Ulster - contain rivers for which studies have been completed or are currently underway. Both Esopus and Black Creeks in Ulster County have had studies completed which recommend to the State Legislature and Governor inclusion in the system. A preliminary study of Catskill Creek in Albany and Greene Counties has been completed and the creek may be mandated for further study by the Legislature and Governor, leading to possible designation in the system. Other rivers for which studies are underway include the following: Batavia Kill, East Kill, Schoharie Creek, and West Kill, all in Greene County, and the Neversink River and Rondout Creek in Ulster County.

Preliminary studies have been done on a number of streams in DEC Region 6, which

includes the Great Lakes Coastal Zone counties of Jefferson and St. Lawrence, to determine their eligibility for possible inclusion in the system. Further study will be needed to determine if there are stream reaches eligible for designation in either or both of these two counties.

A proposal was made to the Legislature to appropriate funds to study the Hudson River from the Blue line to the NY-NJ border for possible inclusion into the system. The proposal failed to gain acceptance in 1977.

The implementation of a detailed management program for each designated river will include the establishment of detailed boundaries and promulgation of formal rules and regulations (both state and local) for the management of lands and water resources. It is the intent of the DEC that where local governments demonstrate the ability and willingness to meet minimum management standards, the Department's own use of its legislatively authorized powers to exercise land use controls in such river areas be minimized. The key to local land use controls in designated river areas, therefore, will be local-state cooperation and action through appropriate management devices such as local codes, zoning and landowner agreements.

The program is similar in approach and concept to the National Wild, Scenic and Recreational Rivers System established in 1968. Only one river in New York has been proposed for inclusion into the federal system, that being the Delaware Main Stem between N.Y. and Pennsylvania, which is not in the coastal zone.

The major underlying cause of many of the administrative problems of the Wild, Scenic and Recreational Rivers Program has been the lack of funding primarily due to lack of Legislative support. No state purpose monies have ever been appropriated to this protected rivers program at DEC. To date, all of the protected rivers work has been carried as an add-on to other related programs in the Department. All aspects of the program have been excessively delayed including:

1. development of rules and regulations
2. river studies of potential streams, and
3. development of specific river management plans

The administrative implications of these delays are that potential or designated rivers in need of additional management will not receive this protection until all aspects of the program are developed.

Another problem area has been the misunderstanding on the part of the public and riparian landowners on certain terms and concepts of the rivers system. This has been particularly so in the use of the term "recreational river". Many people have understood this term to mean a "strip park" along a river designated as recreational. It has been the misunderstanding of some riparian landowners that the designation of their stream as "recreational" would suddenly allow public access on their properties. Such misconceptions have created problems in gaining public acceptance of the program. The primary management objective for all river classes is protection, preservation and restoration.

DEC is considering legislative changes to clarify certain terminology of the Act. The term "Protected Rivers System" would replace "Wild, Scenic and Recreational Rivers System". "Type I", "Type II", and "Type III" would be substituted for "Wild", "Scenic" and "Recreational" respectively. The Wild Rivers Program is administered by the Special Studies and Land Use Planning Section, Division of Land Resources and Forest Management.

While of fairly limited application in the State's Coastal Zone, the Wild, Scenic and Recreational Rivers Program has special significance in that it is the only DEC resource management program involving a comprehensive program for a wide variety of resource types (e.g. wetlands, flood plains, forest and agricultural lands, fisheries, wildlife habitat) and therefore can serve as a prototype to similar resource management concepts required in the coastal management areas. Further, the desire of DEC to develop the program in close conjunction with local government closely parallels a similar interest for coastal management.

J+K

J. Flood Insurance Program --- Flood Hazard Areas

The National Flood Insurance Program provides a system of federally subsidized and actuarially based flood insurance in return for local regulation of flood hazard areas. Under State and federal authorities including Article 36 of the New York State Environmental Conservation Law (1974) and federal Flood Disaster Protection Act of 1973 (PL 93-234), Housing and Urban Development Act of 1969 (PL 91-152), and Housing and Urban Development Act of 1968 - National Flood Insurance Act of 1968 (PL 90-448), the flood insurance program is designed to limit or protect vulnerable new development in flood risk areas and provide reasonably priced insurance for losses.

The Federal Insurance Administration issues official Flood Hazard Boundary Maps describing areas within the one percent annual flood risk (so called 100 year flood line). To acquire first phase program eligibility for flood insurance, communities must enact controls for flood hazard areas, including construction review and permits. Communities may go beyond minimum requirements enacting floodplain zoning and other land use controls.

Following these initial community-wide steps, property owners may then purchase flood insurance. Such insurance has been made a condition of receiving federal or federally related financial assistance for acquisition or construction within identified flood hazard areas. A major impact has been through banking institutions guaranteed by the Federal Deposit Insurance Corporation which must insist that there be flood insurance upon all property in flood hazard areas used to secure loans. Recent amendments to the Flood Insurance Act have modified this to provide that only notice be given if such land is in a hazard area, allowing choice of whether it is insured up to the banks and property owners.

Communities that do not enact minimum controls required under the first phase Energy Program within 12 months of notification are subject to federal sanctions, in that they cannot receive federal loans and grants for certain activities in flood hazard areas. However, New York State law provides that the Department of Environmental Conservation must intervene in case of community non-compliance and administer a special flood hazard area building permit program. The State permit program continues in effect until such time as FIA approves the community's own flood plain management regulations.

The Regular Program is undertaken by communities after HUD prepared Flood Insurance Rate Maps and engineering studies comprising coastal high hazard areas and floodway areas. Stricter regulations related to the floodways within communities must be adopted to become eligible for the Regular Program. As under the Emergency Program for communities which fail to qualify, DEC legally must administer the special flood hazard permit system until the community's own regulations are approved by FIA.

More than 1300 communities were qualified by Fall 1977 for the federal Flood Insurance Program. Coastal communities in New York State with only several exceptions now participate in the Emergency Program. The flood insurance program depends heavily on local government participation. A coastal management program will also require local acceptance and participation. Developing flood hazard building permit ordinances and flood plain zoning and other controls at the local level can tie in with other coastal management purposes which would require additional controls or interprogram relationships over agricultural lands, wetlands, forest lands, critical habitats and other coastal environmental areas. Flood hazard area management in coastal areas can reinforce the intent of other resource management and development programs in protecting coastal areas from degradation and disruption. Coastal management can provide a program of education and

technical assistance to local governments to enable communities to develop expertise at the local level including upgrading local land use ordinances for eligibility under the Regular Flood Insurance Program.

K. Flood Insurance Program --- Shore Erosion Hazards

Under the Flood Protection Act of 1973 (PL 93-234) the Federal Insurance Administration was given the responsibility to provide insurance coverage for losses incurred from erosion and the undermining of shorelines due to flood related occurrences. To accomplish this task, coverage through the National Flood Insurance program has been offered. The addition of erosion problems to flood hazards has redefined the definition of 'flood' in the law to include the resulting erosion or undermining of land from wave attack and water currents exceeding cyclical levels. However, this definition is incomplete because bank composition, water levels and currents are only a few of the factors determining erosion prone shorelines. There is need for a definition which is more appropriate to the shore erosion situation on the Great Lakes.

New York's direct involvement in beach erosion control has been limited to the Long Island-New York City area. Along this coastal area, focus to date has been on physical protection projects because they have been warranted by the dense development along the shore. Where development has not yet taken over an area, land use controls should be instituted to protect not only the coastal area but also the structures which would be threatened by the possibility of hurricane and eroding beaches and bluffs. Erosion insurance must be considered for the Long Island-New York City area to protect existing properties and insure development controls for future construction.

Erosion control is available through federal-state and local programs applicable to the Atlantic shoreline. State authority is provided under

Chapter 535 of the Laws of 1945. More than 100 shore protection projects have been built since 1946.

The Great Lakes states are aware of the importance of shoreline management for an effective erosion insurance program. To acquire insurance, coverage must include permit regulations on shoreland construction and other land use controls to avoid unwise development in erosion prone areas. The Great Lakes states through the Great Lakes Basin Commission's Coastal Management Erosion Subcommittee is formulating a study including appropriate guidelines, techniques and means of compensation to be utilized in an insurance program in erosion-hazard areas. This study will be consistent with other objectives of the coastal management programs in the Great Lakes States.

Once there is greater understanding of erosion processes on the Great Lakes, specific recommendations will be made by the Great Lakes states to FIA regarding changes in the Federal Flood Insurance Program to better accomodate the Great Lakes situation. Another alternative may be to develop a separate erosion hazard protection process through the amendment of the CZM Act or independent legislation.

L - Solid Waste Management

Solid waste management is a regulatory and technical assistance program administered by the Department of Environmental Conservation and its regional offices. Under Articles 27 and 51 of the Environmental Conservation Law, the program encompasses a statewide management plan, solid waste comprehensive studies on county and regional bases to identify alternative solutions to regional solid waste problems, a regulatory framework for waste management facilities, and state aid for construction of municipal solid waste management systems. Part 360, 6 NYCRR refers to solid waste permit procedures for construction and operation permits.

New solid waste management facilities require approval from the Department of Environmental Conservation through a unified regulatory framework which assures safe, efficient, economic and environmentally sound management. DEC provides assistance in site selection, approves engineering plans, and certifies operators, ensuring their sufficient training and experience.

Another permit program relating to land use covers registration of commercial cleaners of septic tanks, cesspools, and marina waste-holding facilities, or disposal companies for commercial wastes and industrial process wastes. This program is administered by DEC central and regional offices or by county health departments. Land use implications from this program may be significant since such wastes are spread on agricultural lands or placed in sanitary landfills. Improper disposal could impose contaminants to ground or surface waters and detrimentally affect vegetation growth.

There are now 635 refuse disposal areas in the State, of which 66 percent are being operated in compliance with State regulations. In 1970 854 refuse disposal areas existed, but only 51 percent complied with State regulations. In most areas of the State refuse disposal facilities are

inspected on a monthly basis, with full engineering evaluations made semi-annually.

Part 360, 6NYCRR which became effective on August 28, 1977 requires public and private operators to obtain a permit from DEC before initiating construction of any significant solid waste facility. Formerly, Part 360 referred to prohibiting burnings of refuse at landfills except by permit, depositing refuse improperly so as to cause or contribute to degradation of water quality, and the method of operation at landfill sites. Revised Part 360 goes much further in regulating solid waste management facilities.

Applicants for permits to construct solid waste facilities or modify existing ones must furnish engineering plans in advance of a permit for construction. Previously approved facilities have 18 months to apply for new operative permits, while existing facilities which have never been granted approval, have six months to obtain a management facility permit. In addition part 360 requires operators and employees to be trained in management procedures relevant to the particular type of facility which they own or at which they are employed.

It is expected that during the first year more than 700 permit applications will be received. Following the first year the expected number of permits for facility construction should average ten to twenty-five per year. Permits are renewable every three years.

As the number of disposal areas in the State decreases, the number of other disposal methods should increase. As in Chapter 425 of the laws of 1977, it is the policy of the State to foster programs to help localities establish source reduction and resource recovery programs. To bring about such programs, the Department of Environmental Conservation has been granted responsibility for developing a comprehensive state resource recovery plan

which is to include legislative recommendations on waste processing for resource recovery and disposal. A draft of the comprehensive plan is to be submitted to the legislature by January 1, 1978. A completed resource recovery plan, following redraft, public hearings and state legislative approval will be available by July 1, 1978.

The solid waste program has succeeded in reducing the number of improperly operated land disposal sites, as well as reducing the total number of sites. Most sites have been removed from coastal areas, and the future concern for coastal off-site impacts from land fills will be reduced. To the extent that solid waste management facilities could be located near coastal areas, the regulatory framework will help assure that facilities are appropriately located and designed with respect, in particular, to environmental effects. The coastal management program will be able to provide site specific information on geographic areas of particular concern and permissible land and water uses, for example, which will input into the permit approval process for facilities proposed in coastal areas.

DRAFT
12/9/77

M. State Oil and Gas Permits

The State exercises authority over oil and gas through three permit programs: oil and gas leases on State lands; drilling, deepening, plugging back or converting wells; and abandoning and plugging wells.

Oil and gas wells exist almost exclusively in western New York with activity in the coastal area taking place mostly in Chautauqua, Cattaraugus and Erie Counties. Along the Lake Erie coastal area gas fields specifically are located in the towns of Ripley, Westfield, Pomfret, Dunkirk, Sheridan, Hanover, Brant, Evans, Hamburg and Lackawanna. In the Lake Ontario coastal towns gas fields are located in the towns of Hamlin, Richland, and Sandy Creek. No oil or gas deposits have been discovered or tapped in the Hudson River coastal area. On the Atlantic Coast, activity will be offshore and primarily subject to federal rather than state regulations.

Under Article 23 of the Environmental Conservation law, leases for oil and gas production on State-owned lands (except state park land and lands beneath Lakes Erie and Ontario) are made by the Department with the approval of the agency having jurisdiction over the land in question. The Department of Parks and Recreation oversees state park lands, and the Office of General Services, through the Public Lands Law, has jurisdiction over underwater lands. Areas are defined, placed for leasing, advertised for bids and awarded to the highest responsible bidder. Only a small portion of the leased land is disturbed during drilling operations.

Such disturbance is controlled through special clauses in the lease with the responsible State agency. After operations cease, the property must be left in a condition satisfactory with the responsible State agency.

Drilling for new oil and gas wells in pools discovered in the State since October 1963 requires a permit from the Department. This permit program is designed to regulate well density to prevent uneconomic overdevelopment from haphazard drilling. Procedures have been established for spacing of units and for compulsory integration of interests within the spacing unit.

Under Article 23 of ECL, the Department is responsible for administering and regulating oil and gas operations on public and private lands in the State. A permit is required by an operator desiring to drill, deepen, plug back or convert a well for exploration or production. Such permit is issued only after requirements including bonding, insurance, organizational report, contingency plans and other agency approvals are satisfied. Permits to drill, when issued, are effective from the first day of May until the last day of October in the same year. A permit to drill does not supercede any permits or approvals required by the U.S. Coast Guard, U.S. Army Corps of Engineers or other agencies having jurisdiction.

About 100,000 acres of the 373,000 acres of State-owned lands under Lake Erie may be attractive for drilling for natural gas. While discovering gas in Lake Erie is a certainty, potential for discovering oil is minimal, according to geological assessments. Nevertheless, gas drilling is being undertaken with great caution on Lake Erie.

Wells may be drilled no closer than one-half mile from the Lake Erie shore or from public water intake areas or nearer than 1000 feet from any other structure in Lake Erie or nearer than one-half mile from a state or international boundary. Administrative and regulatory activities for drilling in Lake Erie are carried out in the DEC Region 9 Olean office and at the central headquarters. However, present staffing cannot meet the needs of the program without incurring environmental risks by virture of simple lack of surveillance or administrative non-responsiveness to private sector elements.

Drilling in Lake Erie is a direct concern for coastal management. Safeguards to those employed by OCS activities will be maintained by drillers in Lake Erie, however drill sites one-half mile from shore are close enough for concern on impacts including water and air pollution, aesthetic degredation, increased shipping activity, pipeline intrusion along the shore and loss of recreation or housing areas.

Rules and regulations on natural gas drilling in Lake Erie are preliminary and subject to public hearing and review.

Under Article 23 operators of oil or gas wells that become non-commercial procucers must obtain a permit from DEC and plug the well in a manner under the provisions of the law. This is necessary because unplugged wells can be sources of land and/or water pollution and are usually aesthetically unpleasing. In addition unplugged gas wells can also present safety hazards. DEC is empowered to take temporary possession, plug the well and recover expenses from the owner or operator of the well. If a well plugging and surface restoration bond is in effect, the bond may be used to repay State

funds for the cost of plugging the well. The Department is proceeding with the well plugging program with no major problems; however, as more wells are drilled each year (the estimated total including wells drilled in 1977 is more than 10,000 wells) additional manpower will be needed for monitoring and surveillance.

N- Mined Land Reclamation

Mined Land Reclamation was enacted to control the environmental impact of surface and underground mining and assure reclamation of the mined areas. Under Article 23, Title 27 of the Environmental Conservation Law, all private and public mining operations extracting over 1000 tons of material per year are required to obtain a permit to proceed from DEC. The permit application must include both a plan for the mining operation and a plan for the reclamation of the mined area. The plans are to be related to officially adopted local government land use plans and regulations. If a permit is granted a bond to assure compliance with the approved mined land use plan must be posted (except for political subdivisions or municipalities).

The permit procedure requires an operator to submit an application from April 1, 1975, however a lack of staff and an abundance of applications delayed the review of these applications and plans. An interim permit procedure has been in effect to compensate for the delay in plan review. During this phase, an operator submits a shortform application registering the area to be actively mined. An interim operating approval is granted and a priority list for reviewing mined land use plans is issued. During this second phase the mining operators must submit a land use and re-use plan according to a time frame set by the priority list. All short form applications were to be submitted by the end of 1976 and land use plan priority lists were to follow by the end of 1977. Delay because of lack of manpower and increasing number of applications has meant a postponement to the end of 1978 for the full implementation second phase of the permit program. There are 1300 applications registered for mining permits. There are, however, some 1500 to 2000 sites. The difference lies in the fact that multiple sites may be listed on the same short form application. Sites have not been plotted

on a statewide map, although this is planned. The number of sites in the coastal area is approximately

Faulty terminology in the original bill was corrected in 1976. Rules and regulations have been approved but need revision. In 1976 an amendment was added which would allow contracting for technical expertise. To date only the U.S. Soil Conservation Service expertise has been used.

In managing the program, the Department has sought and received assistance from the Soil Conservation Service (SCS), and SCS Districts, especially in areas of agricultural concern. If a request comes from a municipality (not an individual), SCS would help the municipality develop a mined land reclamation plan. In addition, SCS might provide plant materials appropriate for a particular site. Other technical services similar to those offered a district cooperator (landowner) are available in the planning phase.

Enforcement of the mining operations during the first phase of the program varies throughout the State. Enforcement and management of the program is a DEC regional responsibility. Once a mined land use plan is approved the region is responsible for the implementing and enforcing the program. Again, the current lack of staff makes enforcement of regulations at mined sites difficult at best.

Mined Land Reclamation includes lands mined above and below ground and lands mined under water such as in a dredging operation. On State land, dredging in salt water falls under the jurisdiction of the Office of General Services which maintains permit programs on underwater lands, through their Public Lands Law. Also there are dredging areas which because of multiple land jurisdiction with the Corps of Engineers require State and federal permits.

To these ends mined land reclamation is an important permit procedure for areas within and near the coastal management boundaries. To date mining operations occur along most areas in the coastal zone. Notable exceptions include DEC Region 2, New York City, and DEC Region 4, Albany-Rennselaer-Columbia Counties. Impact from land mining in coastal areas include aesthetic degradation, loss of protection from wind and water, possibility of eroding beaches, loss of valuable recreation land, excess noise, and air and water pollution (dust and ground water contamination).

Agricultural Districts

Section 25-AA of the Agriculture and Markets Laws authorizes the establishment of an Agricultural Districts program in New York. The objective of the program is to protect and enhance agricultural land as a viable segment of the State's economy and as an economic and environmental resource of major importance. DEC's program responsibilities are administered in the Bureau of Real Property Services.

Viable agricultural land is preserved and protected through the creation of special districts and through special tax relief for farmers. Agricultural districts may be established by individual landowners, who collectively own 500 or more acres of agricultural land and who may submit an application to their county legislative body for approval of the district. The county planning board and a special county agricultural districts advisory committee must review the proposal and make their recommendations to the county legislative body. A public hearing is then held by the county, addressing a number of factors, including viability of the farm lands and the implications of the district for present and future land use.

If the county adopts a district plan, it forwards the plan to DEC for certification. At the state level, the plan is reviewed by DEC, the Agricultural Resources Commission, and the Department of State. DEC cannot certify the plan as eligible for districting unless the Agricultural Resources Commission determines that the area to be districted consists primarily of viable agricultural land, and the Department of State determines that the districting is not inconsistent with state comprehensive plans, policies and objectives. Following DEC certification, the county has the option of holding another public hearing; such a hearing must be held if DEC or the county modifies the plan. The county may also disapprove the plan at this time. After a waiting period, a description of the district is filed with the county clerk and with DEC, and the district goes into effect for eight years. After eight years, it can be renewed by a process similar to the original

creation of the district.

Article 25-AA also allows for state creation of agricultural districts containing unique and irreplaceable agricultural land in units of 2000 acres or more. The Agricultural Resoures Commission must recommend creation of each such district and the Department of State must determine that the district would be consistent with state comprehensive plans, policies and objectives before DEC can certify the district.

Establishment of an agricultural district does not provide absolute protection for agricultural areas, but it does limit some actions that would inhibit farming:

- Only .5 acre surrounding each non-farm structure within an agricultural district can be taxed by public service districts for sewer, water, electricity, or non-farm drainage.
- Local ordinances restricting or regulating farm structures or farming practices cannot be applied in an agricultural district. For example, manure spreading or night-time operation of machinery could not be prohibited or limited.
- Public agencies must identify alternate locations and prove why they are not suitable, before acquiring land within an agricultural district for non-farm development. While the Agricultural Districting Law does not remove the right to acquire land, it is designed to insure that agriculture will be considered before farmland is taken for other uses.
- An eligible farmer, upon application to his local assessor, can receive a use-value assessment on his farmland. This means that annual tax rates will be based on agricultural value of the land, rather than on its market value.

- Although a farmer can obtain a use-value assessment under certain circumstances, even if he is not in an agricultural district, the non-district landowner is subject to much more severe penalties if any of the

land is later put into non-farm use.

-It is part of state policy to modify administrative regulations so that commercial farming is encouraged within agricultural districts.

There are presently over 4.8 million acres of land in 348 agricultural districts in 48 counties of the state. Within the coastal zone there are portions of 21 districts. Most of these areas in the coastal zone are located along the Lake Erie and Lake Ontario shorelines. Several districts are located in the coastal zone along the St. Lawrence and Hudson Rivers. No agricultural districts exist on Long Island.

Where agricultural districts fall within the boundary of the coastal zone management area, there will be a degree of added protection for agricultural lands that would not otherwise exist. This may be particularly important in some of the fruit growing areas along the Great Lakes where close proximity to coastal waters is beneficial for certain species. However, it should be noted that an agricultural district does not guarantee iron-clad preservation of agricultural lands, but only makes it more difficult for development to disrupt farming activities.

P. Liquefied Natural Gas Storage and Handling

Title 17 of Article 23 of the ECL, enacted in 1976, gives the Department responsibility for regulation of the siting and operational practices of liquefied natural gas (LNG) storage and handling facilities.

The law provides that a certificate of environmental safety must be obtained for any liquefied natural gas storage or conversion facility in the State that was not in actual operation on September 1, 1976. A hearing process is required to assure that such facilities (1) conform to siting safety criteria established by the Department, (2) are necessary, and (3) are otherwise in the public interest. Any certificates of environmental safety obtained through these hearings may include operating requirements for the facilities.

The Department must also consider siting criteria for existing LNG facilities and hold public hearings on whether to allow their continued operation and under what conditions. ~~as well as the fire department evaluations discussed above.~~ If it is determined that a facility is to be discontinued, the facility may be phased-out over a three year period.

The Department of Transportation, in consultation with DEC, must establish criteria for the safe intrastate transportation of LNG, including certification of land routes.

The Department of Environmental Conservation was also given responsibility for the preparation of a report evaluating the manpower, training and equipment of local fire departments in terms of their ability to cope with an emergency in the liquefied natural gas facility in their area of responsibility. The report contains recommendations for overcoming any deficiencies. If additional equipment or training to meet LNG emergencies is found necessary, the State can require that these be provided and the costs assessed against the utility company operating the facility.

The LNG siting law has clear implications for the control of land and water uses in the coastal zone. Along with other state legislation, it provides a basis for the siting of coastal facilities. Because the law is recent, no applications have yet been received for LNG siting certificates.

Coordination of LNG siting certificates with other DEC permits may be required, depending on the specific proposed facility and site. In addition, where LNG facilities that handle interstate gas are involved, coordination may also be needed with permits from the Federal Energy Regulatory Commission.

Q. Environmental Notice Bulletin

An amendment to the Environmental Conservation Law of 1975 (ECL 3-0306), requires that the Department of Environmental Conservation develop and circulate a publication at least every two weeks informing the public of all DEC hearings and permit applications requiring notice. This is accomplished via the Environmental Notice Bulletin, distributed by DEC on a subscription basis.

The same law also requires the Department to maintain a registry of officials, agencies and organizations with interests in the regulatory and other programs of the Department, and to publish such registry annually, "in order to assist with communications between public agencies and private organizations in all manners of environmental affairs."

Consideration should be given to expansion of the Environmental Notice Bulletin to include notice of all significant permit applications and hearings in the state coastal management area.

V. Related project review and permit programs outside DEC

A. Federal

A number of federal environmental and navigational safety programs have considerable significance for New York State's coastal zone. Some of these programs, discussed earlier, have been delegated to the State for administration. Others, however, are administered directly by federal agencies. The most important of these are certain Army Corps of Engineers and Environmental Protection Agency programs concerned with environmental protection and navigational safety. Most of these have direct significance to New York State's coastal zone, while some others have indirect significance. Efforts are underway by the New York State Department of Environmental Conservation to improve coordination with Federal permit programs, particularly those of the Army Corps of Engineers.

1. Federal Permits Directly Related to DEC Review and Permit Activities

The U.S. Army Corps of Engineers has a major role in federal permit issuance under the Water Pollution Control Act of 1972 and the Rivers and Harbors Act of 1899.

Section 404 of the Water Pollution Control Act Amendments of 1972 authorizes the Secretary of the Army to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into navigable waters at specified disposal sites. Disposal sites must be selected according to guidelines developed by the EPA Administrator in conjunction with the Secretary of the Army. The Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings, that the discharge of such material into such an area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas.

The jurisdiction of the Corps under Section 404 includes not only traditional "navigable waters of the United States" and adjacent wetlands, but also primary tributaries of "navigable waters," natural lakes over five acres in surface area and their adjacent wetlands, and other "navigable waters" generally up to the headwaters, where streams flow less than five cubic feet per second. This broad jurisdiction means that Section 404 permits are required for the placement of dredged or fill material in or adjacent to virtually all of the surface waters of the State.

Legislation is now pending in Congress that would allow the Corps to delegate to the State the administration of all 404 permits except those involving traditional "navigable waters" and their adjacent wetlands. Section 404 permits parallel those of the New York State Stream Protection Act and the Tidal and Freshwater Wetlands Acts, discussed earlier.

The Rivers and Harbors Act of 1899 prohibits the throwing, discharging, or depositing of any refuse waste into the traditional navigable waters of the United States, its tributaries, or onto adjoining shorelines. Many of the provisions of the Act were transferred from the Army Corps of Engineers to the Environmental Protection Agency by the Water Pollution Control Act Amendments of 1972. However, the Corps retains authority under Section 10 to regulate all construction in and over navigable waters, including wharves, piers and other shoreline structures, as well as all excavation and filling in navigable channels and harbors. (Under the Outer Continental Shelf Lands Act Amendments of 1953, Corps jurisdiction under Section 10 was extended to include areas on the Outer Continental Shelf. This OCS permit jurisdiction is discussed later in this report.)

Section 10 of the Rivers and Harbors Act requires Corps approval in the form of permits or letters of permission for obstructions of any navigable waters of the United States. The construction of any structure in or over any navigable waters, the excavation from dredging or deposition

of material in such waters, or the accomplishment of any other work significantly affecting the sources, location, condition, or capacity of such waters requires both a recommendation by the Chief of Engineers and the authorization of the Secretary of the Army prior to the issuance of such a permit or letter of permission. Public hearings are required for either form of approval.

Section 10 requirements parallel those of the New York State Stream Protection Act, discussed earlier. The New York State Department of Environmental Conservation has taken steps to improve coordination with the Corps of Engineers on Section 404 and Section 10 permits. DEC and the Corps District Officesnow routinely mutually exchange approved permits. DEC treats Corps permit applications as DEC permit applications, thereby greatly simplifying the procedural requirements for applicants and easing enforcement problems. Also, DEC uses the Corps mailing list to meet requirements for permit notifications.

The possible joint processing of permits within the Great Lakes basin is now being discussed between DEC and the Corps Buffalo District Office. Under such an arrangement, the Corps would also treat DEC permit applications as Corps Section 404 and Section 10 permits, leading to further simplification of the permit process. If agreement can be reached, the arrangement could be extended to include other Corps District Offices with jurisdictions in New York State.

Section 401 of the Water Pollution Control Act Amendments of 1972 requires that applicants for licenses or permits from any Federal agency to conduct activities which may result in discharges into navigable waters must provide certification from the state that such discharges comply with various sections of PL 92-500 related to maintenance of water quality. The certification procedure established for making this determination provides for a notice of opportunity for public hearings and for project review. Certification has become the key instrument through which the federal permittee or licensee must adhere to State water quality standards.

This "401" certification is applicable to the Corps permits discussed above as well as to other federal permits. The New York State Department of Environmental Conservation, to improve coordination with Corps permits, attaches the state water quality certification to its permits for projects that also require Corps approval. This significantly simplifies the approval process for permit applicants.

There is a limitation on state '401' certifications, however. Under Corps regulations, certification is not required in connection with an application for dumping outside the territorial sea (beyond the three mile limit) unless the state can demonstrate that dumping in the contiguous zone (between three and twelve miles from shore) will violate water quality standards within the part of the territorial sea under state jurisdiction. New York State has expressed strong disagreement with these regulations, but they remain in effect.

Several other significant Federal permits may also require state 401 certification, including permits from the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission.

The new Federal Energy Regulatory Commission incorporates functions of the former Federal Power Commission and Interstate Commerce Commission. The most significant of these functions for the coastal management program are the permitting and licensing of hydroelectric power facilities including pumped storage projects and associated transmission lines and the issuance and enforcement of certificates for transportation and sale of interstate natural gas. Both of these functions involve public hearing processes in which state and local governments and other interested parties may participate. FERC can invoke the power of eminent domain for certified interstate gas pipelines, including those coming ashore from the Outer Continental Shelf. The State Article VII transmission line approval process is preempted by both the FERC interstate gas pipeline and hydroelectric facility transmission line jurisdictions. Although the state role in FERC decisions

is limited, the consistency provisions of the Coastal Zone Management Act should help provide coordination of federal actions with the coastal management program.

The Nuclear Regulatory Commission has responsibility for licensing and regulation of nuclear power plants. A decision on licensing of a nuclear power plant is made by an Atomic Safety and Licensing Board after staff analysis and public hearings. An operating license from the NRC is required before fuel can be placed in a reactor vessel to prepare a plant for operation. The state may participate in the public hearings as an intervenor, but its role in NRC decisions is limited. Various state and local permits are required, however, prior to construction of a nuclear power plant; these include a certificate under Article VIII of the Public Service Law (See discussion of Public Service Commission). As with FERC program NRC actions are subemct to consistency provisions of the Coastal Zone Management Act. The consistency provisions will hopefully alleviate conflicts that may arise in the coastal zone.

2. Other Federal Permits in The Coastal Management Area

Several federal permit programs have indirect implications for New York State. The most significant of these concern ocean dumping and activity on the Outer Continental Shelf. Ocean dumping within the three mile limit is regulated under both Section 404 of the Water Pollution Control Act Amendments of 1972 and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972. Section 103 authorizes the Secretary of the Army to issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters. "Ocean waters" is defined as those waters of the open seas lying seaward of the baseline from which the territorial sea is measured.

The Environmental Protection Agency Administrator has the authority to prevent the issuance of a permit if he determines that the dumping of the material will result in an unacceptably adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries or recreational areas. EPA routinely reviews all applications. Under EPA regulations, permits for dumping in the territorial sea (within the three mile limit) are to be issued under the Marine Protection, Research and Sanctuaries Act. (PL 95-_____) As noted earlier, State "401" certification is required for dumping within the three mile limit, but in the case of dumping in the contiguous zone, this certification is required only if the state can demonstrate that this dumping will violate state water quality standards within the territorial sea. Otherwise, the state is limited to commenting on ocean dumping permits.

Oil and gas drilling following an OCS lease sale cannot be undertaken unless the lessee obtains a drilling permit from the Department of Interior and a National Pollution Discharge Elimination System (NPDES) permit from the Environmental Protection Agency. In addition, a permit under Section 10 of the Rivers and Harbors Act of 1899 is required from the Army Corps of Engineers. The states have no direct role in the issuance of these permits, although they may comment.

Pipelines from production areas to shore require the granting of an easement on the Outer Continental Shelf from the Bureau of Land Management in the Department of Interior. Other federal permits are also required, including permits from the Corps of Engineers. Within the three mile limit, state permits will be required, including an easement across state underwater lands (discussed below).

The integration of these federal and state permitting requirements is a matter of state concern. Although the Department of Interior has proposed an OCS transportation planning process that would involve federal and state agencies, it does not specifically address permit integration issues. If

a decision should be made to land OCS pipelines in New York State, a suitable framework will need to be in place to coordinate the issuance of various federal and state permits and approvals.

V. Related Project Review and Permit Programs Outside DEC

B. Other State Agencies

1. Department of Health

The Department of Health has statutory authority over a variety of public health programs that will impact the coastal zone. When the Department of Environmental Conservation was created in 1970, certain environmental functions were transferred to the Division of Pure Waters within DEC while a number of public and personal health and sanitation programs remained with the Department of Health. In addition, certain programs such as water supply have been divided in a somewhat arbitrary manner.

The Department of Environmental Conservation has responsibility for the approval of public water supplies, either ground or surface, that are distributed by municipalities, public or private corporations or individual entrepreneurs. The two main objectives of the program are to (1) assure the sufficiency and quality of water supplies and (2) assume that the taking of water for whatever purposes does not adversely affect existing supplies and uses, and such taking does not have other adverse environmental impacts. (See section on DEC permit programs for more discussion.)

While DEC approves the establishment or modification of public water supplies - that is, the taking of water - the Department of Health is empowered to adopt rules and regulations for the protection of such supplies from contamination and to assure that public drinking water supplies are, and remain, healthful for human consumption. These functions include the review and approval of water treatment plants.

Administration of the DOH program is accomplished primarily through District Office Environmental Health Engineers, and in some instances, delegation to City or County Health Departments. The delegation process allows counties or localities to adopt and enforce watershed regulations for the protection of the water supplies.

The Federal Safe Drinking Water Act (PL 93-523) is administered through the Department of Health imposing safe drinking water standards on public and private water supplies. In addition the Department of Health inspects or oversees the regular inspection of water supplies throughout the state to assure the strict enforcement of federal drinking water standards including extensive monitoring and water quality analyses.

In New York State, no real estate subdivision may be sold or leased or a plot plan filed without approval by the appropriate city or county health department, or by the appropriate district office of the New York State Health Department or regional office of the New York State Department of Environmental Conservation.

The split of responsibility generally follows the legislative mandates of the respective departments. The DEC is responsible for the taking of water and the sewage disposal aspects of the subdivision, while the DOH is responsible for regulating the installation of an adequate water supply system and ensuring that the quality of the water will meet drinking water standards.

If a community sewerage system is necessary where there will be a discharge to the surface or groundwaters of the state, a SPDES discharge permit will be required by the DEC (see previous section on DEC water quality and supply program). In a subdivision that is proposed to be connected to an existing adequate treatment plant, DEC or its delegate agency still must review and approve the adequacy of the proposed collection system (sewer size, manhole placement, etc.).

To expedite real estate subdivision review and regulation, under DEC delegation by memoranda of understanding, subdivisions not requiring community sewage systems are reviewed and approved directly by city, county or state health departments. However, discharges to other than a municipal system would require a SPDES permit from the DEC. SPDES permits for all surface discharges must be issued by the DEC, but groundwater discharge review and permits (except for large discharges) have been delegated to capable county

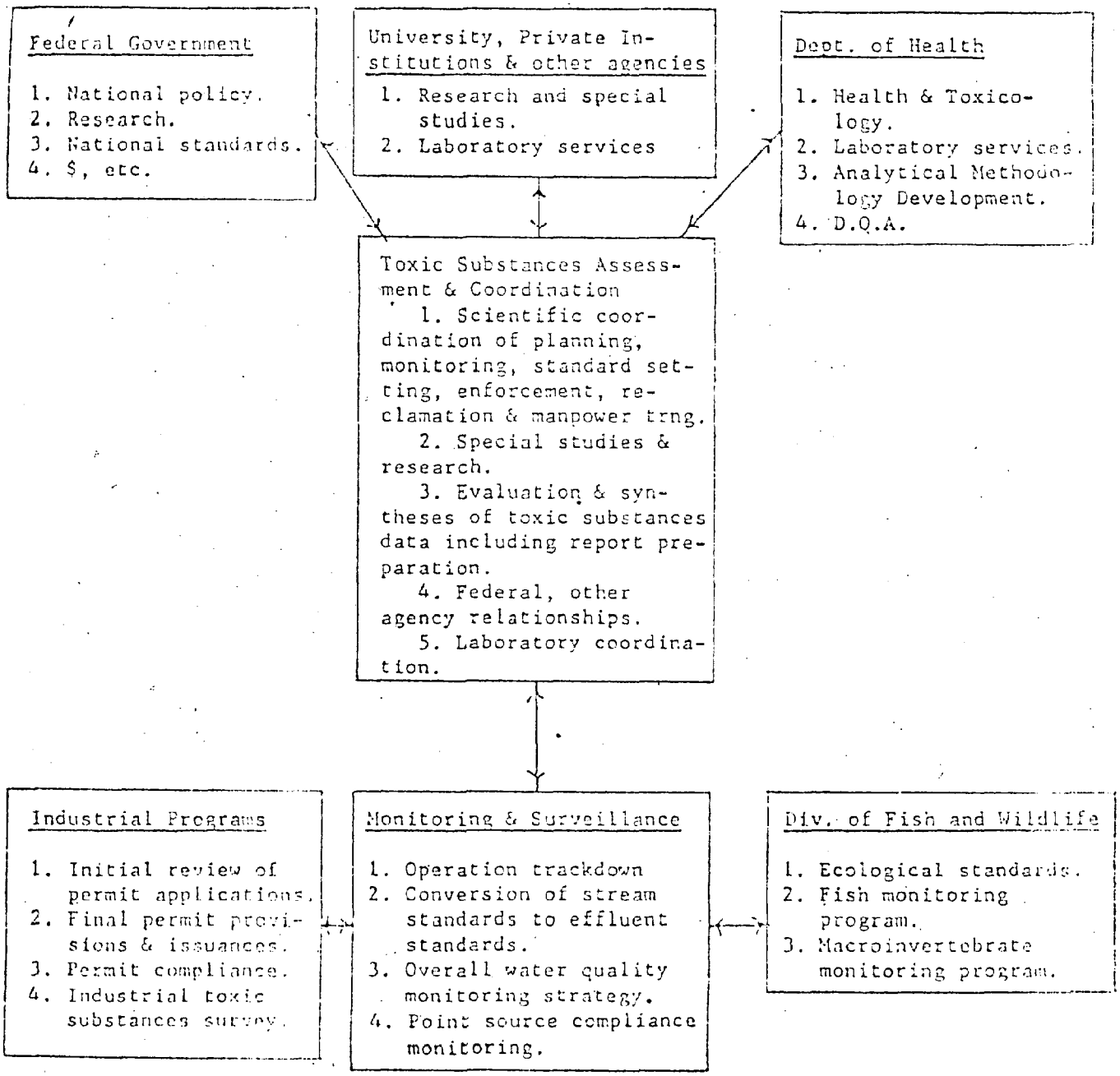
agencies or to the State Department of Health regional offices. Inasmuch as the administration of the subdivision review and permit laws are administratively split between two state agencies, DEC and the Department of Health, their application reflects two different perspectives, that of protecting public health and that of more broadly conserving our natural resources. While the health aspects of these regulations are challenged only infrequently, there often are objections to the application of regulations based on conservation. The review of real estate subdivisions has come under great scrutiny by the Courts in recent years.

In 1975, the Commissioner of the DEC ordered a statewide assessment of possible PCB contamination of ~~the~~ state waterways. During this period the Department of Health Laboratories performed the sample analyses on the water column and the sediments. Later in 1975 and through 1976, the DEC developed a strategy for the Pure Waters Toxic Program (see attached figure). The program is designed to track down areas of toxic substance contamination. Through the Health and Toxicology Center of the Health Department, the DEC and DOH establish standards for aquatic organisms and water quality from a public health standpoint, respectively. Additionally, the DOH develops analytical techniques for the measurement of toxic substances and provides quality assurance of samples. If there is a significant public health concern relating to the potability of the water supply, the Commissioner of Health may issue a public health advisory or an outright ban on the use of that water supply. In the event that fish samples indicate contamination, the DOH may issue a public health advisory on the consumption of fish, while the DEC has the authority to ban fishing (i.e. mirex in Lake Ontario).

There are a variety of other programs administered by the Department of Health that should be mentioned. It should be noted that the DOH has undergone a number of administrative changes and numerous reorganization efforts

Figure 3

Division of Pure Waters Toxic Substances Program
Administrative Mechanisms



to streamline the efficiency of the Department in meeting its legislative mandates. As number of programs were transferred to DEC when the DEC was created in 1970. Generally, the Department of Health has curtailed its activities in areas other than directly related to personal public health in contrast to environmental health. Certain programs (i.e. milk and food inspection) have been transferred to the Department of Agriculture and Markets.

However, a number of more minor programs that may have an impact on the coastal zone still remain within DOH. The DOH has the primary responsibility to ensure, maintain, and improve the sanitary quality of bathing waters for the protection of public health. In this regard, the DOH either through the district offices or delegation to the local health department, inspects public swimming pools and bathing beaches, examines and approves plans for swimming pools, and in some instances provides in-service training of pool and beach operators. The Department has the authority to close public beaches because of public health hazards until the situation is corrected. The DOH also maintains a restaurant inspection program designed to ensure the health of the consumer by protecting food against contamination, insuring the wholesomeness of food, and generally instituting better sanitary practices at these establishments.

Another program that deserves mention is the inspection of temporary residences (camps, trailer parks, farm labor camps, etc.) to assure safe environmental conditions. Permits to operate are needed from the Health Department to ensure that sanitation practices are in accordance with Health Department mandates.

There is considerable relationship between the DOH programs and the coastal zone. Water supply may become an increasing concern especially in critical areas like Long Island. Generally, there are a number of other uses of water that if not used for public consumption would not fall directly within the purview of the DEC. Industrial uses, for example, would be reviewed and controlled through SPDES and possibly SEQR. But the quantities of water are not directly regulated.

The toxic substances program interaction may prove to be the most important DOH program for the coastal zone. The cooperation of the two agencies is evident, especially with regard to establishing new standards and analytical techniques. Although not directly related to permitting by DOH, the DEC may have to impose more stringent effluent standards for toxics through the SPDES program to meet new water quality standards developed by the DOH. Obviously all existing and future development in and around the contaminated area would have to meet the new water quality standards for toxics.

One point that deserves mention is that the DOH has undergone a number of significant administrative changes and reorganization that make it difficult to fully understand and comprehend DOH policy toward the older, long-standing programs not directly concerned with personal health.

The real estate subdivision review program will continue to be an extremely important program in the coastal zone, especially if economic conditions improve and second home construction is accelerated. Land within the coastal zone near valuable natural resources should be carefully scrutinized to avoid any possible environmental damage in the future. Second home construction and/or new development in the coastal zone may also create pressures for land adjacent to properties owned or protected by the state or federal government. For example, if land were owned by the state for a wildlife sanctuary, real estate developers could purchase the abutting properties with the knowledge that the state would never ~~develop~~ build upon the wildlife sanctuary, thereby providing the developer with an esthetic selling feature.

Permit responsibilities of the DOH, delegated from DEC, with respect to groundwater discharges may also be important in the coastal zone. The permitting of septic tanks for individual owners near or adjacent to a valuable resource could present localized problems. While SPDES would cover a single developer of adjacent properties when discharges reaches 1000 gal/day, there is no state control over the cumulative effects of such a development if individual owners installed septic tanks at different points of time (given different original owners of the properties). The same logic applies to both the temporary residences and mobile homes programs.

The inspection and approval of bathing water quality for public beaches also would have an effect on the coastal zone. When last summer's waste-debris incident occurred on Long Island, the economic losses were estimated at approximately $25 million over the period that the beaches remained closed. Further, the adverse publicity had a direct effect on the industry for the remainder of the summer.

Of course, the drinking water and restaurant programs also have a direct effect on the coastal zone. Without such permits, business could not operate. Thus, the maintenance of a high quality source of drinking water is critical.

Because some DEC programs were initially created within the Health Department, there is generally excellent cooperation between the two agencies on environmental and health matters. Specifically the Health Department has not attempted to use up the authority of the DEC vested in the new agency (DEC). However, one must question whether the cooperation between the two agencies is a result of the many individual relationships that presently exist between the professionals of the DEC and the DOH. As these professionals move on or retire the possibility of potential conflicts could increase.

It is the policy of the Health Department to delegate as much authority as can be reasonably handled at the local level, given the resources and the technical expertise. While the delegation policy is sound, this delegation

to a variety of different agencies for a wide array of both major and minor programs makes coordination difficult at best. The consolidation of DOH permit programs that relate to the coastal zone would necessitate a major effort to focus on the programs that would have major impacts.

2. Department of Public Service (Public Service Commission)

The Public Service Commission (PSC) is the prime regulatory body within the State for the provision of public services such as telephone, electricity and other monopolistic commodities.

General powers of the Commission include supervisory and regulatory authority over private gas and electric utilities, steam corporations, telephone and telegraph corporations, environmental planning for gas and electric transmission lines, and safety of liquid petroleum pipelines.

Article VII of the Public Service Law specifies that certain major new fuel gas transmission pipelines require certification prior to construction. This section of the law provides for a formal hearing process on receipt of an application with the applicant, the Department of Environmental Conservation, the Department of Commerce, and the Secretary of State as statutory parties to the proceedings. This article does not apply to any major utility transmission facility over which the federal government has primary jurisdiction. Thus, PSC would have jurisdiction over intrastate fuel gas pipelines only as the Federal Regulatory Commission has exclusive jurisdiction over interstate fuel pipelines.

Article VII also requires a applicant for electric transmission lines to obtain PSC certification prior to construction. Article VII procedures for electric transmission lines certification are identical to Article VII procedures for gas pipelines.

Persons wishing to construct a steam electric generating facility of 50,000 kilowatts or more must obtain a certificate of environmental compatibility and public need from the NYS Board on Electric Generating Siting and The Environment under Article VII of the Public Service Law. The Chairman of the PSC is also Chairman of the Board. The remainder of the Board consists of the Commissioners of Environmental Conservation, Health, Commerce, (or their designees); and an ad hoc member for each application, appointed by

the Governor. PSC furnished, by law, the Hearing Examiner (who co-presides along with an Associate Hearing examiner from the Department of Environmental Conservation) for the hearings during which the record is established upon which the application must be approved, denied, or modified. The Board possesses broad discretionary powers to modify proposed certifications with respect to site, type of generation, and design features subject to the constraint that much modification must be based upon the record. Participation in any Article VIII case is statutory for certain State agencies and open to all interested parties, subject to administrative mechanisms established in the law.

Under Article 3-c of the Public Service Law (Provisions Relating to Liquid Petroleum Pipeline Corporations), the Commission has general jurisdiction for the "conveying, transportation and the furnishing of petroleum..., for any purpose, by way of pipeline" (Section 63ff). The definition of "liquid petroleum" includes crude oil, natural gasoline, natural gas liquids, liquified petroleum gas, liquid petroleum products and any other such flammable liquids.

The legislation gives the Commission braod powers with respect to liquid petroleum pipeline safety. The Commission has general supervision over the safety of all liquid petroleum pipeline corporations, <u>both</u> intrastate and interstate that operate within the state.

The states have the power to regulate the safety of both intra- and interstate oil pipelines both onshore and within the three mile limit. It appears that state regulation of oil pipeline siting is not preempted by the federal government, although this issue is not clearly defined. In New York, no direct legislative authorization for petroleum pipeline siting exists, nor is there legislative authority to require rights-of-way for oil pipelines. However, easements must be obtained from the New York State Office of General Services for any pipelines crossing State lands underwater. (See section on NYS Office of General Services). Federal authorities for oil pipeline siting

rest with the Department of Interior and the Department of Transportation.

Responsibilities for interstate gas pipelines are shared among the Federal Energy Regulatory Commission, the U.S. Department of Transportation and the U.S. Department of the Interior. The FRC has preemptive authority for the siting and rate regulation of all interstate gas pipelines, including pipelines coming ashore from beyond the three-mile limit. An FRC certificate is required for construction and operation of interstate gas pipelines. The Federal Energy Regulatory Commission can exercise the power of eminent domain to acquire rights-of-way for gas pipelines.

Under the Federal Pipeline Safety Act, the setting of interstate gas pipeline safety standards is the responsibility of the U.S. Department of Transportation (DOT). The Act, however, prohibits the application of more stringent standards to interstate gas pipelines within a state. States can become the agent of the federal DOT for interstate gas pipelines. However, the enforcement role of the State is limited to identifying problem areas to DOT for that agency to take enforcement action. Because New York State cannot enforce its own standards which are more stringent than DOT's and because of the cumbersome enforcement role, the Department of Public Service has declined to be the agent for interstate gas pipeline safety.

In the case of <u>intrastate</u> fuel gas pipeline safety, states can adopt their own safety standards if the standards are equal to or more stringent than those set by the federal Department of Transportation. As the agent of the federal Department of Transportation for intrastate gas pipeline safety, the New York State Department of Public Service must certify annually that the enforced standards of this State are equal to or more stringent than the national standards promulgated under the Federal Pipeline Safety Act.

The legislative authority for energy facility siting in the state rests primarily with the Public Service Commission under Article VII, Siting of Major Utility Transmission Facilities, and Article VIII, Siting of Major Steam Electric Generating Facilities, and with the Department of Environmental Conservation under Article 23, Title 17 of the Environmental Conservation Law, which regulated siting of liquefied natural gas storage and handling facilities. Both Public Service Law processes, although sometimes time consuming but exhaustive, reflect concerns for environmental matters as well as for energy. The Environmental Conservation Law process, which has not yet been applied, reflects concerns for environmental safety as well as for energy needs.

Additional legislation under PSC gives the State control over the safety of interstate and intrastate fuel oil pipelines. However, the siting of interstate fuel oil pipelines does not fall within the jurisdiction of Article VII. At the federal level, the U.S. Department of Interior Bureau of Land Management has responsibility for the granting of rights-of-way for pipelines on the Outer Continental Shelf, but not within State boundaries; the U.S. Department of Transportation has jurisdiction over pipeline safety. Input by the State with respect to siting would be through the environmental review procedures of the National Environmental Policy Act. The State, however, could refuse to grant a right-of-way for the pipeline to come to shore should it choose to do so. There is some confusion about this later point in that provisions of the Coastal Zone Management Act and other federal legislation make clear that overriding national interest or security considerations override state decisions.

In the case of siting fuel gas pipelines, however, the Federal Regulatory Commission has clear authority to invoke powers of eminent domain for rights-of-ways. Thus, states have little or no voice in the decision of locating interstate gas pipelines within State boundaries.

Article VIII proceedings and permitting will be an integral part of the Coastal Management Program, ~~if renewed.~~ At the present time, this legislation is due to expire in 1980; thus, a comprehensive review of the effectiveness of the program will precede the decision to extent the process. The Article VIII proceedings will help to ensure that proposals to construct a facility as large as a major power plant, which could possible have widespread adverse environmental effects if located in certain parts of the coastal zone, are subject to a thorough review so that all possible conditions, safeguards, alternatives, and impacts are considered.

For gas pipeline and electric transmission line facilities proposed for coastal areas, the required certification process will help ensure that the proposals meet the objectives of the CZ management program with respect to permissible land and water uses and preservation and protection of certain designated geographic areas of particular concern (GAPC's).

The permitting processes under Article VII and VIII must obviously be integrated with the Department of Environmental Conservation.

For the other federal program discussed (interstate gas pipelines), the provisions of federal consistency with the State plan will hopefully alleviate any conflicts that may arise with respect to the wise uses of the coastal zone.

3. State Energy Office

The State Energy Office (SEO) is a relatively new agency (1976 Legislative Session) which is the policy, planning and programming agency in the state for the wise use of energy sources and conservation of those sources.

One of the legislative mandates of the SEO is the preparation of a state energy conservation plan pursuant to the federal Energy Policy and Conservation Act of 1975 that has been submitted to the Federal Energy Administration.

The state legislation setting up SEO encompasses a wide range of both general and specific powers, functions, and duties as well as the broad energy policies. Because of the recent creation of the Office, the full impact of all aspects of the legislation has not yet been translated into implementation programs including permits designed to meet the mandates of the legislation.

Although the State has the regulatory authority for siting of major steam electric generating facilities, major transmission lines and LNG storage and handling facilities, as well as the safety standards for fuel oil pipelines, there is no legislation for the direct authority for the siting of all energy facilities.

The State Energy Office has been given the primary authority under the States Coastal Management Program to develop the energy facility siting process necessary to meet the requirements of the federal CZM Act.

Experiences in other states have indicated that the energy aspects of the Coastal Management Program appear to be the most controversial and as such, have led to conflicts between the energy companies and environmental groups. Thus, the requirements of the federal CZM Act, and the state approach will be critical.

Future project review and regulatory roles assigned to the State Energy Office should be carefully integrated with the permit issuing responsibilities of other agencies including DEC.

4. Office of General Services

The Office of General Services functions as one of the State's prime service agencies to other agencies in State government. Generally OGS is responsible for the administration and management of State-owned buildings and capital equipment as well as the management of the State-owned automobile fleet.

In addition, OGS is the administrative agency for the Public Lands Law, which became effective on February 17, 1909. This broad legislation assigned to OGS the responsibility for the general care and superintendence of all State land, upland and underwater, that is not rested in some other State department, division, bureau or agency.

The Commissioner of General Services is empowered to issue leases, grants, easements and licenses for dredging, bulkheads, fills and structures, pipelines, and cables both underwater and aerial.

There are a number of specific programs encompassed by the Public Lands Law. These specific programs include the following: grants of unappropriated State lands (lands to which the State holds title and are not directed by law to any specific use); underwater land grants (grants in perpetuity of underwater land may be made to owners of adjacent land to promote commerce or for other agricultural, recreational, transportation or conservation purposes); extracting minerals from State lands; underwater land easements (in order to control the placement of structures on State underwater land, construction beyond an upland owner's riparian rights must be authorized by an easement on underwater lands not appropriated to any immediate use); removing materials from underwater lands (licenses and regulates the removal of sand, gravel, and other material from the underwater lands of the State.) Most of this removal is done in connection with a requirement for fill material or keeping navigable channels open.

The most direct applications of the law to coastal zone management would include easements for any pipeline right-of-ways, and dredging and filling underwater lands for navigation improvements. In addition, the extraction of minerals from the coastal zone waters may prove to be important in the future as federal offshore mineral extraction programs are begun. In specific areas of the State, most notably in New City and Long Island, certain townships posses title of ownership of land underwater. Thus the integration of the permitting authority issuance in these areas to the coastal management program is essential.

The powers given the State under the Public Lands Law are potentially very significant for coastal zone management, particularly as a means to exert controls over permissible land and water uses. Most of the grants, leases, easements, licenses and permits that can be issued under the law encompass activities that may have adverse effects on the coastal environment. Accordingly, it is essential that these fall under the purview of the coastal zone management program.

5. Office of Parks and Recreation

The New York State Office of Parks and Recreation (OPR) undertakes a number of activities. It has the power to acquire land, and develop, preserve, manage, maintain and operate properties. OPR can also enter into contract with other individuals and groups for these purposes. Currently, OPR holds 142 different properties, many of them in the coastal zone area, ranging from natural and historic preservation areas to areas developed for intensive recreation.

OPR has an enforcement function through the State Park and Parkway Police and through the administration of the Recreational Vehicle and Navigation Laws. The placing of navigation markers and the charting of certain inland waters are also an OPR responsibility where the Coast Guard and/or New York State Department of Transportation does not perform these functions.

The OPR has either direct responsibilities for State programs and/or directly manages Federal programs providing grants-in-aid for the acquisition and development of recreational areas and for the preservation of historic sites. In this capacity OPR accepts and reviews applications, provides for appropriate budgetary, audit and other State support, provides for the appropriate environmental analysis and maintains the appropriate acts and documents for these projects.

The Commissioner of OPR is State Liaison Officer for recreation and historic preservation. In this role, in addition to the grants-in-aid and operations functions mentioned above, the Commissioner is in some cases required to and in other cases has the powers to review and comment on projects sponsored by other agencies. Most of these functions relate to the preservation and use of recreational land and waters and historically and archeologically important sites.

Existing OPR programs can be useful to CZM in several respects. Identification of OPR properties in coastal areas will assist in the determination of the boundaries of the coastal zone subject to the management program and in the designation of geographic areas of particular concern. OPR powers to manage its properties can be incorporated into the CZM program as a means to control land and water uses on these properties. The powers of OPR could be used in appropriate instances to acquire coastal lands suitable for recreation or historic preservation. Finally, the review powers of OPR should be incorporated into the CZM program to ensure that projects sponsored by other agencies do not adversely affect OPR recreational or historic sites.

6. Department of Transportation

The New York State Department of Transportation (DOT) has the responsibility to coordinate and develop comprehensive, balanced transportation policy and to coordinate and assist in the development and operation of the

transportation facilities and services that the State requires. Such facilities include highways, rapid transit, railroad, bus, marine and aviation facilities and services, whether publicly or privately owned, developed, operated or maintained.

In the past Session, the Legislature passed a comprehensive oil spill compensation liability program to be managed by the State.

The legislation amends the Navigation Law, the Highway Law and the State Finance Law to establish a comprehensive program for oil spill cleanup and compensation. The major focus of the program is the establishment of a fund up to $25 million based on a 1¢ per barrel tax of all petroleum delivered to New York State. The fund would be used, in the event of a spill, for a variety of purposes including cleanup and compensation to affected individuals.

Responsibility for the program is shared among three state agencies. The Department of Transportation licenses the major petroleum facilities (total storage capacity of more than 400,000 gallons) and is the lead oil spill clean-up agency. The Department of Environmental Conservation will provide DOT with technical advise and expertise with regard to environmental concerns. The Department of Audit and Control supervises the administration of the Fund.

Negotiations are currently underway among the agencies to produce memoranda of understanding and to promulgate needed rules and regulations for implementation of the program.

The significance of the DOT functions within the coastal zone should not be discounted. Since the location of transportation facilities in coastal areas could have major impacts on land and water uses within the coastal zone, there must be a mechanism incorporated within the CZM Program to ensure that these impacts are eliminated or minimized. Because many transportation facilities are federally-funded, the National Environmental Policy Act would require the preparation of an Environmental Impact Statement (EIS) for such

federally-funded projects. This would serve as an appropriate mechanism to review impacts. In addition, implementation of the State Environmental Quality Review Act (SEQR) will ensure that remaining non-federally-funded projects are scrutinized for their environmental impacts. With these two envionmental review mechanisms (NEPA and SEQR) in place, assessment of the environmental impact of transportation facilities proposed for coastal areas is assured.

With respect to the oil spill liability and compensation program, the permitting of these major facilities will focus on specific land and water uses in and around potentially valuable natural resources. Thus, the oil spill program, which will obviously give the state the flexibility and the resources to prevent, control, and cleanup spills, may be more valuable in the long run to the coastal program as a means of assessing present and future industrial GAPC's and their significance to the wise use of the resources of the coastal zone. The identification of these areas where little potential conflicts would arise would be helpful to energy industries who may want to locate within the State (i.e. OCS operations).

Another important facet of the legislation is that for the first time, the State recognizes through the legislation that its citizens have a legal right to be compensated for those oil spill activities that may adversely affect their livelihood.

As the program moves into the implementation stages, its significance to the coastal program will be enhanced by work done through CZM to identify critical natural resources vulnerable to spilled oil. Thus, as the State develops oil spill contingency plans and improves its capability to respond to spills, a prioritization of areas will be evident from the CZM program through the identification of GAPC's.

C. County Permit and Review Functions

Enforcement of some State laws and programs can be delegated to County Health Departments, depending upon the capabilities and desire of the particular agencies to implement them. This applies primarily to air and water quality concerns and permitting which are discussed at greater length in the sections on State programs.

Other aspects of land management at the county level are functions of the Soil and Water Conservation District. In New York State, since 1940, soil and water conservation planning has been encouraged through county soil and water conservation districts and assisted by the U.S. Soil Conservation Service (SCS). Plans within districts take two general forms: 1) district-wide (county) and small watershed (basin) plans implemented by both individual and public projects, and 2) individual land management plans, usually for farms, which are implemented primarily by individual landowner action.

As of August 1976, there are soil and water conservation districts formed in all counties of the state but Nassau and the boroughs of New York City. Enabling legislation was passed in the 1976 State legislative session to allow the formation of a district in Nassau County; similar action may be taken for New York City next year.

Generally, the county wide or basin soil and water conservation plans are part of small watershed planning efforts, under PL-566, which, since 1954, have developed projects or considered proposals for planning in 54 watersheds affecting some 30 counties.

Since the 1940's individual soil and water conservation plans have been prepared on a voluntary basis for a large number of farms and other rural land holdings; about 30,000 of the existing 60,000 farms in the state have had such plans prepared for them. In order to receive county or federal

assistance in the development and implementation of soil and water conservation plans, a landowner agreement is executed with the county soil and water conservation district, which morally obligates the landowner to follow such plans, when and if economically feasible.

Under a 1975 amendment to the Soil and Water Conservation Law, all owners of productive lands (agricultural or forestry) of 25 acres or more will be required to obtain soil and water conservation plans for their lands by January 1, 1980. Such plans are then to be updated every five years. No state or local permit programs are tied directly to preparation of these individual soil and water conservation plans at present.

However, any recommendations in the plans for such actions as developing point source discharges, taking large quantities of water or making major stream alternations would be subject to regulation under programs directly applicable to those activities.

In both the voluntary program and the required plans, there are no penalties for non-compliance, with two exceptions: 1) if the plan has been made a condition of a mined land reclamation permit, or 2) if the plan has been made a condition of receipt of cost-sharing through federal Agricultural Stabilization and Conservation Service (ASCS) programs.

The voluntary program has had two objectives: 1) the protection of the land from erosion or other forms of soil or crop loss, and 2) improved productivity from the land holding. However, thsoe soil and water conservation plans which are prepared in compliance with the statutory 1980 requirements need only be concerned with the first objective; that is, such plans shall provide an orderly method for landowners and occupiers to follow in limiting soil erosion and in reducing the amount of pollutants entering into the waters or on the lands of the state.

Management practices and control devices prescribed under soil and water conservation plans are likely to alleviate nonpoint source water pollution problems occurring as a result of agricultural or forestry activities. Consequently, the soil and water conservation planning program has potential significance to the water quality management plans developed throughout the state under PL 92-500 (Water Pollution Control Act Amendments of 1972) and other such water quality improvement efforts.

Although planning is required for areas of twenty-five acres or more, the voluntary program applies to all landowners with no constraints as to minimum size or nature of the productivity. This is important because it allows proposed mined land areas of less than 25 acres to be eligible for reclamation planning assistance under the soil and water conservation plan program.

The importance of soil and water conservation programs to coastal zone management lies mainly in their contribution, via additional review procedures, to the improvement and/or maintenance of environmental quality. In addition, they present another coordination vehicle between state and local government.

D. Local Regulatory Functions

State enabling legislation provides a number of regulatory tools to New York State cities and towns. The most useful of these with regard to Coastal Zone Management include:

1. Zoning ordinances and zoning boards of appeal
2. Planning boards and their associated master plans and subdivision controls
3. Building codes
4. Protection of historic and/or esthetic districts
5. Acquisition of open spaces
6. Local environmental conservation commissions.

Zoning is the most common implementation of the police power in land use, granting power to promote "public health, safety, morals, and general welfare" at the local level. Essentially, zoning is a process of dividing a town into districts and assigning appropriate and compatible uses to those districts, but it may not be so restrictive as to constitute confiscation of property. This power enables the locality to control the types and/or density of use in the coastal zone, consistent with the overall goals of the town as delineated on their official map and master plan.

Planning boards can be created to advise upon and direct development of a city or town. They are responsible for creating a master plan, and reviewing proposed actions for decisions by the legislative body.

With the addition by Laws, 1976, Chapter 272, of the power of local governing bodies to delegate to planning boards the authority to review and approve site plans, special permits or both, a major addition to local land use powers was made.

Site plan approval involves review of the site layout and design of a proposed land use. The new statute gives local governments great flexibility in listing the uses (or areas of the municipality) for which approval of site plans is required, and in providing criteria for approval. The

special permit (sometimes called "conditional use" or "special exception") is a technique for providing that certain uses will be permitted only upon compliance with stated conditions. The special permit power is of particular significance in geographic areas where it is desired to provide additional conditions - drafted with the character of that area in mind - to insure that development that does occur is compatible. The special permit device should be of special importance in the coastal zone area.

There are a number of techniques available to communities for managing land uses without depriving landowners of enjoyment or development of their land. These include cluster zoning and planned unit development as means of arranging development on the land in such a way as to minimize environmental conflicts, provide open space amenities, and generally avoid suburban sprawl. These two techniques could be very useful in the Coastal zone, where development pressures and environmental concerns both exist and flexibility would be desirable.

In addition to the above, there exists a process called Transfer of Development Rights which permits a limited shift of zoning density from one part of a municipality to another. For example, this would be used when zoning decisions based on goals would result in a reduction of the return on an individual landowner's investment. For example, this would be useful when zoning decisions based on planning goals would result in a reduction of the return on an individual landowner's investment.

The goals may relate to open space preservation, preservation of areas of particular scenic or environmental concern, preservation of historic structures and preservation of agricultural land. From a planning viewpoint, the uses which ought to be made of these lands might be strictly limited; but such limitations might, if implemented, prevent the earning of a reasonable return by the owner, and might be held to amount to a confiscatory "taking."

Transfer of Development Rights, or TDR, is defined as the attaching of development rights (the right to develop land) to specified lands which are desired by the municipality to be kept "undeveloped" to carry out any of the goals noted above, but permitting these rights to be transferred from that land, so that the development which they represent may occur someplace else. The someplace else would be lands for which more intense development would be acceptable. This method could prove most helpful in coordinating all the conflicting uses pressuring the coastal zone, but is a relatively new and, as yet unutilized technique in New York State.

Building codes and regulations cover not only proposed construction, but also proposed uses of new and existing buildings. They dictate access requirements to existing roads and emergency services, as well as building specifications. The Building Inspector is responsible for reviewing a permit application in terms of all applicable regulations. Any proposed exceptions to regulations are referred to the Board of Appeals and can be appealed to the State Courts if necessary. Coupled with other regulatory functions, such as zoning, building regulations can help in determining a land use pattern.

If a historic or esthetic district exists in the Coastal Zone, a town does have the authority to preserve it, either by outright acquisition or by using its power to control private activities in the interest of public health, safety, and general welfare.

Another way of controlling use of desireable land and providing for future needs is the acquisition of open space, either by purchase or donation to the town or city, again in the interest of general welfare.

Either of the above could be used in preserving portions of the coastal zone where such preservation has been deemed desirable.

Specific local government agencies and officials responsible for the regulations described are:

1. Zoning ordinances	Adopted by Town Board with advice of Planning Board
Zoning appeals and special permits	Zoning Board of Appeals, can be appealed to State Court
2. Subdivision controls	Adopted by Planning Board, approved by local legislative body
	Proposal review by planning board for conformity with master plan and zoning requirements
3. Building codes and permits	Building inspector reviews all applicable regulations before granting permit
	Variation review by Board of Appeals
4. Historic and/or aesthetic districts	Town board and advice of planning board
5. Acquisition of open spaces	Town board with advice of planning board and conservation commission

In addition to these regulatory agents, conservation advisory councils (CAC's) can be delegated, by the local government, with the responsibility for review of proposed actions or developments from an environmental standpoint. While the councils have no regulatory power of their own, they can advise decision makers as to the merits of particular courses of action. These councils can also exist at the County level. There is potential for these councils providing a great deal of help in considering CZM questions, particularly in view of their connection with DEC programs through the

Bureau of Community Assistance. One area where they have already been of help is the State Environmental Quality Review Act. Responsibility for SEQR implementation is spread over the various local permitting agencies who may ask the CAC to review and advise on proposals with regard to SEQR regulations.

The issues and potential conflicts within the coastal zone demand a comprehensive effort in land use planning. The mechanisms exist at various levels. However, there will be a need for increased coordination of lcoal permit programs with State permit and project review programs if coastal zone management is to be a successful venture.

VI. Current DEC Efforts to Streamline Regulatory and Review Procedures

A. The Adirondack Park Experience

A unique resource management area has been given very special treatment in New York State through the establishment of the Adirondack Park Agency. While the area covered is in no part coastal, it has some very parallel management concerns and the methods of project review and permit handling there are worth examining for their application in the coastal zone.

Upon its establishment, the Adirondack Park Agency (APA) was given responsibility to come up with a Land Use and Development Plan applicable to all lands within the Adirondack Park except those owned by the state. The park covers an area of over six million acres of which approximately 2/5 th's is state owned and covered in a separate State Land master plan prepared by APA in conjunction with DEC. The Land Use and Development Plan was adopted by the legislature in 1973 and the use intensities therein became official maximum development densities for all private lands. In addition, certain other development restrictions related to shoreland areas and other natural features, such as elevations over 2500 feet, were involved in the same legislation.

While first initiative was left to local government for an enforcement, ultimate responsibility fell upon APA. Furthermore, certain large scale or particularly sensitive types of developments have been retained under APA review and permit responsibilities.

Many local landowners, developers and governments objected to this assumption by a state agency (APA) of what have been traditionally local government land use controls. Initial APA review and permit efforts were not clearly understood, often seemed arbitrary and capricious, and were time consuming and confusing to the local residents. This confusion was further compounded by health and environmental regulations imposed independently by other county and state agencies, primarily

DEC and the State Health Department (HD).

As a consequence, APA with the assistance of the New York Department of State, U.S. Department of Housing and Urban Development and various regional, county and local planning agencies increased the amount of local planning assistance for the development of land use plans and controls by Adirondack communities. The problem of multiple permit processing was also tackled through a special agreement executed by DEC, HD and APA.

This three party agreement provides for designation of a lead agency to accept permit applications, coordinate their review and transmit findings and decisions on behalf of all three agencies. The APA takes on lead agency responsibilities for all projects which would require a decision on their early developmental phases which normally precede the need for HD or DEC clearances. APA also serves as lead agency for certain ~~legislatively delegated~~ Environmental Conservation Law (ECL) permits within the Adirondacks such as the freshwater wetlands and the wild, scenic and recreational rivers programs. The Health Department is lead agency for those projects involving initial actions which would have direct implications upon public health, and DEC takes the lead when the prime action relates to environmental management or protection functions mandated under the ECL. Table 1 lists the split of lead agency responsibilities.

The routine administration of the APA/HD/DEC coordinated project review system lies jointly with the Director of Operations for APA, the Supervisor of Environmental Analysis for DEC regions 5 and 6, and the State Health Department District Sanitary Engineers (five districts) or designated county Directors of Environmental Health.

This latter designation stems from State Health Law which provides for assumption by county health departments where they have been established, of many of the responsibilities assigned to the State Health Department, provided the county agency has the capacity and desire to carry out such functions. In particular,

certain regulatory and inspection roles related to drinking water supply and sanitation are closely linked to DEC and APA development review processes. Among the twelve counties which are wholly or partially within the Adirondack Park, only Clinton County exercises their authority, at present. (in contrast, when considering interagency project review and permit consolidation in the coastal areas of the state, it should be noted that out of 28 coastal counties, 22 have health departments of which 18 exercise their own subdivision review and approval authority with respect to public health matters.)

Since there can be confusion on the part of the applicant with respect to project review jurisdictions, provision has been made under the APA/HD/DEC agreement for jurisdictional inquiry process. The lead agency and cooperating agencies can take no more than 15 business days to respond to such an inquiry. A fifteen day time frame also has been established for review of applications for completeness of information needed regarding the proposed project or action. Where other statutory time tables apply, they shall commence to run only upon determination that the application is complete.

One problem has been that applicant submissions through a designated lead agency have sometimes led to delays in referral to the other interested agencies. These delays can be caused by backlog of other work responsibilities for the initial reviewers, and by complications in transmitting information from one office to another. Such delays can cut deeply into a fifteen day review period especially if several agency offices in separate locations are involved. Since the time frames have been established by interagency memoranda and not by law, the fifteen day review periods for jurisdictional inquires and application completeness are working objectives, and sometimes are exceeded. It should also be noted that the APA/HD/DEC memorandum specifies a review period of fifteen <u>business</u> days, whereas the completeness review under Uniform Procedures if fifteen calendar days.

The three agencies have agreed not to act upon permit issuance until all three agencies (and delegated reviewers such as a county health department) have completed their reviews and determined their permit actions. It is agreed however, that any of the three agencies may act imdependently with respect to a permit decision; one may issue a permit on a project while on of the other agencies denies theirs.

The Uniform Procedures Act, which applies only to DEC, lays out very specific time frames within which DEC must act. Unfortunately, these do not always coincide with the timing of the APA/HD/DEC project review agreements. Since the time frames within the Uniform Procedures Act are binding upon DEC, effective continuation of the memorandum of understanding between the three agencies is contingent upon its modification to reflect these timing changes. Unless all agencies agree and are able to maintain project review and permit processing exactly consistent with Uniform Procedures, it is likely that the memorandum of understanding will be modified to an agreement to cross file applications and exchange review information without working with specific timetables. This would leave DEC free to exercise its responsibilities to process permit applications ~~exactly~~ as called for under Uniform Procedures.

An opportunity to compare the success of Uniform Procedures integration into the APA/HD/DEC agreement will be possible over the next few months (early 1978) because the two programs will be handled differently by the two DEC Regional Offices which cover the Adirondacks. This will be done through the recognition of official application filing points under Uniform Procedures. In Region 6, covering the western Adirondacks, the filing points for all permit applications covered by Uniform Procedures will only be at that region's DEC major offices, one at regional headquarters in Watertown, the other at the sub-regional office in Utica. That means that an applicant who would be submitting a combined application under the three agency atreement to APA or the Department of Health will be responsible separately to see that all aspects of his application related to DEC permits must be filed

at Utica or Watertown before the Uniform Procedures "time clock" starts. DEC Region 5, on the other hand, will continue to recognize APA and Health Department offices as well as DEC regional offices as official filing points, if they have been so designated in the APA/HD/DEC agreement.

In the present administration of the three agency agreement, special effort is made, through established APA liaison, to get local input into the permit decisions made by all three agencies, and to coordinate with local project review and permit activities. If the APA/HD/DEC project review system is to be considered as a prototype for similar interagency state project review in the coastal zone, then it is equally important to consider mechanisms for local project review liaison and coordination. A step beyond such coordination is the actual delegation of review and permit functions. These potentials will be discussed at greater length in a later section of this report.

B. <u>The DEC "Delegation Law"</u>

Chapter 600 of the Laws of 1976 added a new subparagraph 2.p. to Section 3-0301 of the Environmental Conservation Law regarding the Department's authority to carry out its functions, powers and duties through delegation of certain functions to other agencies of government. The new law provides that there may be such delegation to "---municipal health or environmental departments or agencies or other appropriate governmental entities---". It further states that eligible local agencies "---shall meet such qualifications relating

to adequate authority, expertise, staff, funding, and other matters as may be prescribed---."

Delegation may consist of "---such functions of review, approval of plans, issuance of permits, licenses, certificates or approvals required or authorized by this chapter as the Commissioner may deem appropriate..subject to conditions as he may establish." The law further encourages the Department to assure greater direct local involvement in land and water management decision-making and program implementation and to facilitate project approval and permit issuing procedures at local level when this will make it more convenient and accessible to applicants, by stating that the reasons for local delegations are "---to expedite the review of matters within the jurisdiction of the Department, to provide for better coordination among different levels of government---" and "---to enhance environmental protection---."

It is clear that such delegation of authority is revocable because the law also provides that "---powers delegated pursuant to this (subsection of the law) may be withdrawn by the Commissioner, at any time, upon thirty days written notice---."

Such delegation is not without precedent within DEC. Along with responsibilities passed from the State Health Law to the Environemntal Conservation Law when DEC was formed are a variety of review and permit tasks related to the maintenance of water quality, especially with respect to real estate developments. Such tasks by law are transferred from the State Department of Health to county and city

health agencies where these have been established. These arrangements have been continued in the Department of Environmental Conservation. They are discussed at greater length in the sections of this report which covers DEC water quality and supply regulations and the regulatory activities of the Health Department.

Additionally, within the Department of Environmental Conservation, there are a number of long standing programs, mostly related to water resources, which have provided opportunity for local participation in review of proposed project or actions through regular public hearing procedures. And more recently the Freshwater Wetlands Law (ECL Article 24) and ECL Acticle 36 on state participation in the National Flood Insurance Program have stressed local government responsibility to take the first initiative in these programs.

Prior to passage and totally independent of the Delegation Law, DEC has tested the delegation of some project review and permitting aspects of the Stream Protection Law, notably in Rockland and Tioga Counties. The background to and success of these two early approaches toward delegation are discussed in a brief section at the end of this chapter.

The recent addition of subparagraph 2.p. to Section 3-0301 of the Environmental Conservation Law greatly broadens the potential for delegation of DEC authority to county and local governments by administrative procedure rather than by piecemeal statutory change. It is a very forward step toward further streamlining of project review and regulatory programs.

It also places upon DEC three major responsibilities:

(1) to develop criteria for measuring municipal administrative and enforcement capability as a basis for delegation;

(2) to monitor and evaluate local or county performance based on established standards and guidelines; and

(3) to withdraw delegated authority if performance is not equivalent to state level administration of the same program.

In addition for every program or portion of a program selected for delegation, DEC should prepare standards and guidelines under which municipal agencies may administer it. Such guidelines should be widely promulgated and understood before a local or county agency agrees to accept delegated responsibilities.

Voluntary local assumption of DEC delegated authority is unlikely to occur for many DEC programs unless there is some way to provide for local costs for review and administration. It may be possible to review certain portions of DEC programs as part of local regulatory processes with little or no increase in administrative costs; e.g. construction on flood plains as part of regular building permit administration. However, it can be expected that local financial support will be necessary in most instances, and if there is special emphasis placed on delegation in coastal areas, such local support might in part come from Section 306 CZM implementation funds.

In addition to providing funding to counties and local governments to help them carry out delegated project review and permit activities, DEC also can expect to be called upon as a source of information and expertise on location of critical resources, identification of environmental impacts and resource management practices. For example, the development of an atlas of resources and critical areas of concern

and of a project review information system for coastal areas, all of which would deeply involve DEC, could serve as major tools to expedite both state and local permit and review activity. Interpretation of Department laws, rules and regulations may also be sought. DEC regional offices should be especially prepared to give such assistance, and where feasible enlist county agencies to help with such information distribution and interpretation.

It is obvious that from program to program and from one part of the State to another, local abilities and desire to assure program implementation or project review or permit delegation will vary widely. The new law is sufficiently flexible to allow incremental delegation both by program element--e.g. the identification of local wetlands or the monitoring of air quality--or by jurisdiction, such as a village, a sewer district, all streams within a county, or the coastal management area of a town. For example, a local environmental health agency could assume certain air quality monitoring responsibilities without commitment to monitoring water quality. Similarly, an agency could undertake project review activities, hold hearings or public information meetings and make recommendations to DEC, leaving the actual permit issuance with the Department. In many instances initial delegation should be made on a provisional basis under continuous scrutiny by DEC until the municipal agency has clearly shown its ability to carry on its delegated functions.

The existance of local land use and development plans, such as those developed within the framework of the state Coastal Management Plan can serve as major guides for local project review and permit activities.

The local capability of developing and maintaining such plans is another measure by which DEC must judge the capabilities of a community to accept delegation.

Review and permit delegation must also be considered with respect to the Department's supervision of the State Environmental Quality Review (SEQR) program. The SEQR process is being instituted gradually at state and local level during 1976, 1977 and 1978 under DEC rules and regulations, 6NYCRR Part 617. Since 1972, 6NYCRR, Part 615 has allowed DEC to require environmental impact assessments of certain projects for Department review. In contrast. Part 617 is intended to provide information and, if necessary, impact statements for local agency decision-making before they take actions of an environmentally sensitive nature. Because SEQR requires local review of locally controlled projects, it is likley that ultimate delegation of some state-to-local permit issuing authority may also be appropriate in conjunction with well-run local review processes.

Having emphasized the very positive aspects of delegation and the intent of DEC to make use of subparagraph 2.b. of Section 3-0301 of the ECL, one very major caution must be raised. The objectives related to delegation of responsibility do not always go hand-in-hand with objectives to consolidate and expedite activities related to some of these same responsibilities. In the case of project review and permit activities, the recently passed Uniform Procedures Act, applying exclusively to the Department of Environmental Conservation, forces the Department to exercise great care in any future delegatory actions it takes. The very explicit time frames for processing permit applications under Uniform Procedures leave no leeway for delegated

authority which cannot respond within such time frames.

Consequently, DEC must carefully examine the capabilities of any prospective delegate agency to expeditiously process applications before it makes commitment to transfer responsibilities to that agency. In addition, even where actual delegation does not occur, but agreements are made only to coordinate review activities, DEC must be able to abrogate such agreements if other parties to them cannot act within Uniform Procedure time frames.

In summary, the delegation process under Subsection 3-0301-2p. cannot short cut the authority assigned by law to DEC, but rather must be carried out at municipal level in a manner prescribed by DEC with an equivalent degree of technical capability and enforcement. Based on Department guidelines and standards there should be some uniformity of approach to such delegation from one county or municipality to the next, at least within particular programs. The existence of county and local plans and planning processes as guides is one measure of capacity for acceptance of delegation. And lastly, the capability of the delegate to respond within DEC time frames is paramount.

All such contraints notwithstanding, further delegation and interagency coordination of DEC permit and project review functions is essential. There is much need for mechanisms to assure greater local involvement in such decision-making and DEC staff must have additional back-up in the actual processing of applications. The Delegation Law is such a device. It is up to DEC to develop means of identifying the

"appropriate governmental entities" to carry out its programs through delegation.

no specific place mentioned

C. Substitution of Approved Management Plans for Project Review and Regulation

One means of substantially reducing the administrative burdens of required project review and regulation at all levels of government while still meeting the needs of resource protection may be to provide management plans for specific land areas and types of activities--e.g. a watershed, a scenic highway or river corridor, the coastal management area of a town, a farm operation, a surface mine or perhaps the total physical development of an entire town or county. Such management plans, to be approved by the appropriate authorities, would incorporate the standards under which future land resource management and development activities occur. Actions consistent with--that is, neither contradictory to, nor in violation of--the approved plan could be undertaken and continued without challenge. Actions contrary to the management plan would subject to review and modification, and to imposition of penalties, if undertaken in violation of terms of the management plan. Obviously the most crucial aspects of such a process are those of providing a clear indication of what actions are covered within the plan and the specification of standards within which such actions will be judged. Over-view monitoring to insure that approved plans are effectively implemented also is a critical issue, and all plans should be subject to periodic review and update.

While a wide range and scale of management plans are suggested by the

examples above--that is, from individual farms to entire counties or coastal management areas--there is little likelihood that such a range can be applied regionally or statewide for many programs. The more extensive the coverage of the plan--e.g. a whole county--and the more diverse a range of programs to be included, the more difficult it becomes to provide suitable criteria for all likely land and water resource management and development situations.

It may be possible to set up criteria for farm management plans so that actions resulting in erosion, water quality degradation, stream bank disturbance and flooding all may be controlled through the application of sound management practices. In fact, rural non-point source pollution control is likely to be achieved best through land owner commitment to sound management practices, rather than by absolute imposition of explicit regulations based on specific standards.

On the other hand, overall land use plans for municipalities or counties probably never can, by themselves, be explicit enough to serve as final land or water resources management tools. Rather, such plans are more apt to call for imposition of separate direct regulations such as zoning or building codes, or for preparation of smaller special area management plans for such resources as GAPC's, wetlands or wild and scenic rivers, which in turn may be adopted in lieu of specific regulations. While comprehensive community and county development plans, basinwide water resource and coastal area management plans may serve as excellent guides for more detailed

planning and as a basis for project review and permit issuance, such plans themselves should never be the exclusive criteria for judging regulatory and implementation programs.

What is most desirable is that land management plans at all levels of government and for specific programs or activities be worked out cooperatively between governments and land owners, be publicized and understood, and then be applied in such a way that certain project review, regulatory and implementary functions may be covered instead by owner or operator commitment to follow specified prectices or procedures. Land owners' or developers' acceptance of a land management plan should never be considered as a blanket absolution to operate outside of regular rules and regulations normally applicable to their activities. Those agencies customarily exercising final permit authority must continue to monitor activities under all land management plans and enforce penalties against all violations.

D. Examples of Local Assumption of DEC project Review and Permit Responsibilities in Rockland and Tioga Counties

For several years the Department has been exploring ways in which certain aspects of Department review and permit activities under the Stream Protection Law (ECL Acticle 15, Title 5) could be administered locally. A pilot program of local participation and cooperation in regards to the issuance of stream protection permits was established in Rockland County in 1975. In this instance, DEC and the Rockland County Drainage Agency have established procedures under a memorandum of understanding whereby the Agency has assumed review responsibilities in that county for all non-governmental projects covered by the Stream Protection Law. Army Corps of Engineer

jurisdiction on the Hudson River excludes local review responsibilities for this stream. DEC reviews all state and local government projects in the normal manner.

The Drainage Agency distributes, receives, field inspects, reviews and makes recommendations on stream protection permits. The actual permit is issued by DEC based on the Drainage Agency's recommendations. Hearings are held by DEC if they are deemed necessary.

Tioga County also has an understanding with DEC in regards to the local administration of the Stream Protection Law. However, this situation is very different from the one established in Rockland County. In Tioga County, DEC has issued a single permit to the Tioga County Soil and Water Conservation District and cooperator/landowners. This permit primarily covers routine or minor projects, as ~~identified~~ in the permit. With the issuance of this general permit the District has the authority to approve or disapprove projects of cooperator/landowners.

Because the general permit is issued to specific cooperator/landowners they are responsible for their own regulated activities. Individual cooperator/landowners may be removed from list on the general permit if, in the opinion of the Regional Permit Administrator, the conditions or the intent of the permit is not followed. Governmental agencies or non participating landowners are required to go through the normal channels of state review.

For those counties which have the technical capability and desire to participate in the local administration of the Stream Protection Law,

several benefits may result. The fact that the county Soil and Water Conservation District is the local administrating agent encourages participation by landowners in the District. Duplication of state and local administration efforts is also reduced. Presently, DEC regional offices feel that approximately 25 additional counties are in a position to accept local administration responsibilities.

VII. Support and Funding for County and Local Project Review and Permit Activities

From the applicants perspective, it is likely that there could be great improvements in the processing of DEC permit applications and in their coordination with other permits at local government level through delegation of project review and permit issuance responsibilities. This is only possible, however, if local governments are willing and able to become more deeply involved in DEC permit programs.

In order to gain greater involvement locally it is recognized that some assistance should be given to local governments in the form of direct funding for application review and processing done on behalf of the state, and in the form of technical assistance and advice regarding specific projects.

Several state and federal assistance programs are now in existance which give support to local governments for project review and processing. These include DEC funds to counties for review and planning activities by county health departments and environmental management councils, and funds from the Department of Housing and Urban Development, with some state matching money, for local planning and project review.

The Department of Environmental Conservation has certain programs which provide environmental management advice, such as those under the state Fish and the Wildlife Management Act (FWMA) and the State Forest Practices Act (FPA). In addition DEC works closely with the New York State Cooperative Extension Service and the U.S. Soil Conservation Service with respect to their advisory programs to landowners and local governments. Special attention should be given to expansion of these advisory programs within the state coastal management area.

A. Use of Local Assistance Funds to Facilitate Project Review and Permit Administration

1. Use of "701" Program to Facilitate Project Review and Permit Administration at the Local Level

Under Section 701 of the Housing Act of 1954 as amended by the 1974 Housing and Community Development Act regional and county planning agencies and some of the larger cities have received funding to develop and implement comprehensive land use and housing plans. To support implementation of these plans, the planning agencies have undertaken technical studies, provided technical and planning assistance to localities, conducted a public information and education program and reviewed projects, as required under A-95 procedures and on their own initiatives.

Currently, regional and county planning agencies within the coastal regions of the State are directly expending over $1.8 million in "701" Program funds to implement land use and housing plans and supporting activities. Table 1 indicates the distribution of these expenditures by coastal region. Based upon review of work programs for 1977-78 only a very small proportion of total "701" funds are specifically directed towards project review types of functions. Excluding A-95 clearinghouse and review responsibilities by regional planning agencies, only four planning agencies, Orange, Greene, Rensselaer and St. Lawrence Counties have project review functions identified in their respective "701" work programs.

The low priority for project review activities in the current work programs reflects the necessity to devote almost all resources to complete the land use and housing plans because of federally

mandated deadlines. All plans must be submitted to the Department of State, the designated statewide "701" agency, by mid-April for review and approval. By July 1, 1978, these plans must be endorsed at the local level by appropriate chief elected local offic als. Successful completion of these requirements are necessary in order to ensure continued HUD funding of housing and community development projects, facilities and programs

It should be expected that future "701" funding to regional and county planning agencies will provide higher priority for project review activities. Public and private housing and community related projects to be funded in whole or in part by federal funds must be reviewed with respect to consistency with the officially approved land use and housing plans.

The "701" Program and planning agencies responsible for the land use and housing plans could perform an important function with respect to achieving coastal management objectives through project review. The land use plans have been formulated in consideration of economic, social, physical and environmental criteria and objectives. They could provide a viable basis to review the desirability of projects from a coastal management perspective as well.

The provision of administrative grants under Section 306 of the Coastal Zone Management Act for project review activities to county and regional planning agencies would strengthen an existing in-place technical and institutional capability. Combined with the liklihood of increased "701" program emphasis on project review, it could be one of the most efficient means to achieve coastal management

objectives by local project review and permit administration.

Considerations in allocating Section 306 administrative grants needs, however, to be based upon review of each individual planning agency. Substantial variation exists with respect to staffing expertise, acceptance by local governments the private sector and the community in general. Most importantly, planning agencies in the coastal regions have significant differences with respect to legal authority and "clout" concerning development proposals and project review. Therefore the merits of 306 funding to "701" agencies must be carefully evaluated on a case by case basis.

Table 1: "701" Program Expenditures in 1977-78 by Regional and County Planning Agencies in New York State's Coastal Zone.

	Total Program Expenditures* $ (000)
Long Island	- [1]
New York City	640
Hudson Valley	412[2]
Eastern Great Lakes	397[3]
Western Great Lakes	401
Total	1,850

Addendum:

Tri-state Regional Planning Commission	975[4]

* Two thirds Federal funds plus match of 1/3 State/local contribution

Sources: NYS Department of State and HUD

[1] No formal "701" Program for year.

[2] Includes the Capital District Regional Planning Commission part of whose jurisdiction includes counties outside coastal area.

[3] Includes the Central New York Regional Planning and Development Board part of whose jurisdiction includes counties outside coastal areas.

[4] Covers Long Island, New York City and Lower Hudson Valley as well as New Jersey and Connecticut.

2. Use of HUD Community Development Grant Program to Facilitate Project Review and Permit Administration at the Local Level

Under title I of the Housing and Community Development Act of 1974 as amended in 1977, Congress authorized a Block Grant Program to aid cities and urban counties to alleviate physical and economic distress and revitalize urban areas. There are two programs under the Act that could have potential benefits for coastal management related local project review and permit administration. The basic block grant program has appropriations of $3.5 billion, $3.65 billion and $3.8 billion for fiscal years 1978, 1979 and 1980 and the urban development action grant (UDAG) has funding of $400 million for each of the above three fiscal years.

Both the basic block grant and the UDAG programs will be used principally for "bricks and mortar" projects including both the construction and rehabilitation of public and private structures and facilities. However, other supportive and complementary activities could also be eligible for funding including code enforcement, historic preservation planning, urban environmental design and administrative costs. These latter activities could be directly supportive of permit administrative programs for coastal management objectives.

Under the Basic Block Grant entitlements, large cities alone in New York State will be receiving in fiscal year 1978 a total of $372 million. Smaller cities, towns and urban counties will also be eligible for funding under this program, with the amount of their funding not determinable at this time.

Table 2 provides information on the distribution of funding entitlements of over $1 million among cities in the state's coastal regions. A total of $324 million will be provided to these cities with the bulk allocated to New York City. Other cities within the state's coastal region have allocations of less than $1 million with their aggregate funding at a level somewhat below $25 million.

The amount of funding that communities in New York State and its coastal regions receive under Urban Development Action Grants (UDAG) will be dependent upon the merits of submitted project applications in nationwide competition. The focus of UDAG objectives is to promote economic revitalization in communities with population outmigration and/or a stagnating tax base and to reclaim neighborhoods with abandoned or deteriorated housing. Based upon these objectives, significant sums could be allocated from the total $400 million annually to communities in New York State if strong applications that meet the eligibility and selection criteria are submitted.

Both the Basic Block Grant and UDAG programs might potentially aid in local permit administration to support coastal management objectives. However, given the main thrust of these programs and the urban re-development orientation of local public and non-profit groups that will be funded, the prospects are not inherently positive. What would be needed is concerted efforts at coordination and integration. This may not be feasible, given the complex and differing institutional structures and constituents represented under the Coastal Management Program versus housing and community development.

Table 2: HUD Community Development Block Grants - 1978: Entitlements of over $1 million to Cities in New York State

I. Coastal Regions	$ million
Long Island	2.5
New York City	225.0
Hudson Valley	59.6
Eastern Great Lakes	-
Western Great Lakes	37.0
Subtotal	324.1
II. Non-Coastal Cities	22.8
All Entitlements over $1 million	346.9
Addendum:	
All Entitlements in New York State	372.0
Entitlements in New York State under $1 million (coastal and non-coastal cities)	25.1

Source: U.S. HUD Region II Office

3. Support for County Health Departments

Since the 1930's, State aid for local environmental conservation activities has been provided to local health departments for the reimbursement of all salaries and wages of personnel employed directly in the performance of such activities. Reimbursement is also provided for such additional expenditures as may be incurred in administering federally-aided local air pollution control programs, local mosquito abatement programs and local environmental control agencies. The level of state funding is set at 50 percent, contingent upon matching expenditures by the county and city health departments concerned.

Local assistance funding is administered by the Regional Operation Division of the Department of Environmental Conservation. Levels of program effort are established via informal agreement between the regional engineers and county and municipal health agencies, and formalized by submission of an Application for State Aid Based on Estimated Expenditures for Environmental Conservation Programs. The application requires a scheduling of functions and activities to be performed, amounts of work to be performed and man-days devoted to each work category (Program Plan - Schedule A). In addition, a schedule showing the name, title, salary and time expenditure of each employee by major program function is also required (Program Plan - Schedule B). Review and approval of applications is based upon local needs in relation to overall program priorities, alternative methods of accomplishing agreed-upon objectives and availability of funds, contingent upon legislative approval and subsequent scaling.

Activities eligible for DEC local assistance funds are summarized in Table 1 with detailed information provided in Program Plan - Schedule A. attached.

Table 1

Field Activities Eligible for Local Assistance
Funding by the Department of Environmental Conservation

Programs	Field Activity
Water Pollution Control	Planning Municipal Treatment and Collection System Construction Municipal O&M SPDES Permit Processing Process Non-municpal Plans (>1000 gpd) and Industrial Waste Plans Monitoring Water Quality Accident Activity Enforcement Actions
Air Pollution Control	Operation and Maintenance of Samplers Sampling Source Identification Applications Review Identify Sources not Previously Certified Investigation and Resolution of Nuisance Complaints Enforcement Actions Identification of Significant Pollution Sources Air Episode Actions Motor-Vehicle Emissions Control Other Agency Interaction
Solid Waste Management	Existing Facilities Inspection Waste Disposal Facilities Design Enforcement Actions Solid Waste Comprehensive Studies Scavenger Wastes Activities Resource Recovery Activities Solid Waste Nuisance Complaint Activity
Radiation Control	Enforcement Activities Discharge Evaluation Radioactivity Surveillance
Mosquito Control	Control Activities performed under Health Department Direction
Noise Control	Local Government Assistance Noise Complaint Activities
Pesticides	Inspections Case Preparation

Table 1 (cont'd)

Program	Field Activity
Mined Land Reclamation	Reclamation Activities
Administration	Direction Administrative Services Training Public Relations and Self Education

Source: New York State Department of Environmental Conservation. Application for State Aid Based on Estimated Expenditures for Environmental Conservation Programs by County and City Health Departments (or Environmental Control Agencies). Schedule A: Distribution of Manpower by Program Category).

Current year Department reimbursement to local health departments for any or all of the program activities indicated in Table 1 is shown for the State's coastal regions in table 2.

Total money currently committed to the local assistance program statewide does not exceed $5 million - a small amount in relation to the diversity of program areas and activities funded. Coastal zone counties and New York City will receive $3.8 million, or 93 percent of $4.1 million total reimbursement estimated for calendar year 1977. New York City and Long Island will receive 78 percent of all reimbursement.

Figures are not readily available to indicate levels of reimbursement by program area and activity within total expenditures, but could be developed. A check of current year applications for reimbursement in DEC Region 4 indicates that man-days of effort in Albany and Rensselaer counties are distributed by program areas as indicated in table 3.

At present, the local assistance program is subject to attrition due to failure of local health departments in Erie, Niagara, Monroe and other counties to expend monies at estimated levels required for 50 percent reimbursement. Other counties have become ineligible for assistance due to poor performance.

Administrative grants authorized annually under Section 306 of the Coastal Zone Management Act might be applied through the regional management structure in place under the local assistance program, to ensure continuation of local health department efforts in program areas relevant to Coastal Zone Management, as defined under Section 304. Section 306(f) authorizes allocation of a portion of grants under the section to local governments, areawide agencies, and regional or interstate agencies, for the purpose of carrying out its provisions. Consideration should be given to providing 306 funds to health departments for environmentally-related activities within their coastal zone boundaries. Identification of the highest priority programs

Table 2

Local Assistance Funding to Health Departments by the Department of Environmental Conservation
Calendar Year 1977

Coastal Regions	County	Total Funding For All Purposes*
Long Island	Nassau	$ 492,447
	Suffolk	622,911
	Total	$1,115,358
New York City		1,886,561
Hudson Valley	Albany	25,555
	Rensselaer	19,700
	Greene	1,129
	Columbia	5,550
	Ulster	26,392
	Dutchess	81,073
	Orange	11,465
	Putnam	9,427
	Westchester	193,279
	Rockland	78,400
	Total	451,970
Eastern Great Lakes	Franklin	--
	St. Lawrence	--
	Jefferson	--
	Oswego	10,000
	Cayuga	15,030
	Total	25,030
Western Great Lakes	Chataugua	14,995
	Erie	120,960
	Niagara	108,829
	Orleans	3,950
	Monroe	105,307
	Wayne	--
	Total	354,041
	GRAND TOTAL	$3,832,960

-- no health department or no application for reimbursement

*actual and estimated amounts to year's end at 50% reimbursement level. Multiply by 2 to obtain total program expenditure.

Source: New York State Department of Environmental Conservation, Office of Fiscal Management

Table 3

Man-hours of Effort Estimated in Environmental
Programs Subject to Local Assistance
Fiscal Year 1976-77

Program	Albany County		Rensselaer County	
	man-days	pct.	man-days	pct.
Water Pollution Control	287	32	189.5	29
Air Pollution Control	323	36	140.5	21
Solid Waste Management	66	7	203.5	31
Radiation Control	1	0	0.0	0
Mosquito Control	145	16	0.0	0
Noise Control	2	0	2.0	0
Pesticides	0	0	10.0	2
Mined Land Reclamation	0	0	0.0	0
Administration	64	7	110.0	17
Total	888	100	665.5	100

Source: New York State Department of Environmental Conservation, Region 4 Office. Applications for State Aid.

for funding support needs to be developed by DEC coastal management staff in conjunction with DEC regional program staff.

4. Support of Environmental Management Councils

At the county and city/town level, Environmental Management Councils and Conservation Advisory Councils, respectively, may be commissioned by the local government to review and advise on environmental concerns. By law, these councils are advisory in nature, having no regulatory power. Operating budgets for them are handled as a 50/50 split between the local government and the state.

Additional monies can be obtained via the local assistance program administered by the Bureau of Community Assistance at DEC. These funds are available for research/survey projects and for project review. They may not be used specifically for permit administration functions. However, if an appointed official in charge of permit administration requests that the commission review proposed actions and give advice on environmental aspects of permits, local assistance funds could be used in the review process. This procedure has been employed in State Environmental Quality Review, and could be applied to Coastal Zone proposals, though such use is not the primary purpose of such funds.

Environmental Management Councils and Conservation Advisory Councils exist in many of the coastal communities. Their potential in some counties, such as Nassau and Suffolk has not, as yet, been realized. Encouragement of more active participation for these councils could be of great benefit to the Coastal Zone Management program.

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