

**STATE OF WEST VIRGINIA**

**PRELIMINARY PERFORMANCE  
REVIEW OF THE**

**OFFICE OF ENVIRONMENTAL ADVOCATE**

Office Needs to Add Management  
Controls  
DEP Should Refile Rules

**Performance Evaluation & Research Division  
Building 5, Room 751  
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305**

**(304) 347-4890**

PE 96-04-45

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Performance Evaluations and Research Division

John Sylvia, Research Manager  
Patrick Cadle, Research Analyst

June 1996

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 5, Room 751A  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0592  
(304) 347-4890  
(304) 347-4889 FAX



Antonio E. Jones, Ph.D.  
Director

June 5, 1996

The Honorable A. Keith Wagner  
State Senator  
Box 446  
Iaeger, West Virginia 24844

The Honorable Joe Martin  
State Delegate  
Building One, Room 213E  
1900 Kanawha Blvd. East  
Charleston, West Virginia 25305

Gentlemen:

Pursuant to the West Virginia Sunset Law, we are transmitting this Preliminary Performance Review of the Office of Environmental Advocate, which will be reported to the Joint Committee on Government Operations on Monday, June 10, 1996. The issue covered herein is "Office needs to add Management Controls and Division of Environmental Protection should refile rules."

Sincerely,

A handwritten signature in cursive script, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/ahs

Enclosure

\_\_\_\_\_ *Joint Committee on Government and Finance* \_\_\_\_\_



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## Executive Summary

The Office of the Environmental Advocate was created to fulfill a dual role. These roles are: (1) to provide the citizens of the State with an avenue of education and input into the Environmental Protection system; and (2) to provide the DEP with information concerning the public's attitude toward DEP policies, so that the DEP can become more responsive to the needs of the public.

### **Issue Area 1. The adoption of certain management control techniques would raise efficiency and quicken the rate of completion of goals and duties.**

Although the OEA has achieved some success in accomplishing many of the goals designed to meet the mission, there remain a number of incomplete duties from the Code of State Rules (CSR) and unaccomplished goals the OEA set for itself. The reason for this failure to complete goals, such as the goals to create a citizen's guide to the DEP and to produce informational brochures about the services the Office provides, revolves around the lack of management control techniques that would assist the OEA in developing more precise planning, better using its resources and accounting for time consumption.

Additionally, the OEA has used an unreliable method for measuring public opinion. The OEA has not devised a scientific method for measuring the public sentiment toward the DEP over extended periods of time. The use of a polling mechanism should be used instead of relying solely on the Town Meetings for this purpose.

The DEP has received numerous suggestions from members of the public through the OEA's public outreach. Some of these suggestions have been adopted in practice. However, the adoption of these suggestions has been only through verbal commitments on the part of the Director. Without written policy changes or directives, it is possible that these changes may not outlast the current DEP administration.

#### **Recommendation 1**

*The OEA should complete the citizen's guide to the DEP and the informational brochures as soon as possible.*

#### **Recommendation 2**

*The OEA should keep a log of its routine activities such as telephone time, time spent in meetings, etc., and use this as a guide when determining the amount of time remaining for long term projects.*

### **Recommendation 3**

*The OEA should resume the creation of Annual Action Plans as stated in the CSR, and include in them more detailed analysis of the schedules, resource demands and other aspects of each goal. By quarterly review of the plan, the OEA could assure that it is remaining on schedule, and change the resources or time devoted to projects which are not advancing as planned.*

### **Recommendation 4**

*The OEA should use a scientific method of polling public opinion, even if it must contract for the service, to track the long term level of public satisfaction with the DEP.*

### **Recommendation 5**

*The DEP should evaluate its commitment of resources to the OEA in light of the desired goals of the Office, and provide personnel resources appropriately. If the current level of resource commitments is the desired level, the goals of the Office should be set to correspond to the size of the staff.*

### **Recommendation 6**

*The DEP should devise a mechanism for deciding whether and how to incorporate into policy the changes which result from the suggestions of citizens at Town Meetings or other OEA sources of input. Whether this be through changes in manuals of operations or in written memorandums from the Director, the DEP must design some way of making them more permanent.*

## **Issue Area 2.     The rules promulgated by the DEP for the operations of the Advocate's Office were filed as Interpretive Rules instead of Legislative Rules.**

The DEP was given the responsibility by the enabling statute to promulgate rules to govern the position of Advocate. The rules that the DEP promulgated were Interpretive Rules instead of Legislative Rules. The type of rules that the DEP promulgated, and the circumstances under which the rules were created, are such that, according to statutory definitions of rules, should have been filed as Legislative Rules. Additionally, evidence indicates that the original intent of the Legislature was that the rules be Legislative Rules.

### **Recommendation 7**

*The DEP should promulgate new **LEGISLATIVE Rules** to replace the existing interpretive rules and to submit them to the Legislature for approval by the next session. For the sake of clarity, the Legislature should amend the enabling statute (§22-20-1) to state that the rules for the Environmental Advocate shall be Legislative Rules.*



## **Review Objective, Scope and Methodology**

This preliminary performance review of the Office of the Environmental Advocate (OEA), a branch of the Division of Environmental Protection (DEP), was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10, Section 11 of the *West Virginia Code*, as amended. The primary function of the OEA is to serve as a liaison between the DEP management and the private citizens of the state. The role of the OEA is twofold. It should inform the DEP of the issues that are of concern to the West Virginia citizen, thereby making the DEP more responsive to the public, and it is to educate and assist the public towards greater knowledge and participation regarding the environmental protection system.

The objective of the review was to determine to what extent the OEA was accomplishing this function. The review was designed to determine if the efforts of the OEA have resulted in the DEP being more responsive to the concerns of the private citizen; and in the public as a whole having greater access to information from, and having input in, the DEP management system.

The OEA is a small enough organization that the scope of the review covered all aspects of its activities. Special emphasis was placed on the results of certain public outreach projects such as the "Town Meetings", on the adherence to statutory obligations and on the OEA's record of achievement of goals and duties.

The time period covered by the review was from the creation of the OEA in July 1994 to the present. The methodology included interviews with personnel of the OEA and its parent agency, the DEP; review of documents concerning the fiscal, operational and planning activities of the OEA; and direct observation of meetings and presentations conducted by the Advocate. In addition, a telephone interview was conducted with the Louisiana Attorney General's Environmental Advocate Office, the only other such entity in the nation.

This review followed the Generally Accepted Government Auditing Standards (GAGAS).



**ISSUE AREA 1: The adoption of certain management control techniques would raise efficiency and quicken the rate of completion of goals and duties.**

**Background**

The Office of the Environmental Advocate was created as a part of the broader DEP reorganization during the 1994 Legislative session. The statutory establishment of the OEA is found in the *West Virginia Code*, §22-20-1. The enabling statute is very brief and outlines no specific duties, powers or mission for the Advocate. The statute delegates the establishment of the duties and powers, as well as qualifications, to the Director of the DEP, who was to promulgate rules governing these areas. The actual description of the OEA's duties and mission is found in the *Code of State Rules (CSR)*, Title 38, Series 10.

**Desired Purpose and Mission**

According to the Annual Report of the DEP for FY95, the first year in which the OEA was a part of the DEP, the mission of the Advocate's Office was defined as *"to provide advice and assistance concerning environmental policy as it relates to the public."* In a separate report on the OEA's activities, the Advocate says *"The Office was designed to provide a voice to citizens in the state's development of environmental policies within the agency."* The OEA functions as a liaison between the public and the agency. This role requires the OEA to:

1. be accessible to the general public to answer questions and provide assistance in resolving problems;
2. inform and educate concerned citizens about environmental issues and the environmental protection process and about how they may provide input into the process; and
3. communicate to the DEP citizen concerns regarding environmental issues or regarding the environmental protection process.

**This should result in the two ultimate mission outcomes of the OEA. These two outcomes are:**

- 1. To foster a greater degree of knowledge about the environmental protection process on the part of the general public; and**
- 2. To create an atmosphere within the DEP which is responsive to the needs and concerns of the West Virginia citizen.**

In practice the OEA is to be a two-way conduit of information. It is to gather information from the public through means of direct contact with individuals or groups. This information primarily concerns the public attitudes toward environmental issues that affect individuals or communities and toward the methods and effectiveness of the DEP in addressing these issues. The OEA is to relay this information to the DEP hierarchy, with the intention of helping the DEP to better tailor its policies and programs toward meeting the needs of the West

Virginia public. In addition, the OEA provides information to citizens regarding how they may best address the environmental problems affecting their lives and how they may obtain assistance from the DEP.

Among the most important goals and duties that were specifically designed to accomplish this dual mission are illustrated in the following table. Information is provided concerning the current level of completion of the tasks.

**Table 1**

<b>Goal Description</b>	<b>Goal Completion Status</b>
Develop brochure to describe the services offered by the OEA	Not Completed
Establish Town Meeting series to receive input from public	Ongoing since 1994
Create 800 telephone number to provide immediate access to public	Completed and ongoing
Publish articles to increase public awareness of the Office	Done through DEP newsletter; occasionally through other media
Measure public opinion toward DEP	Not Completed
Create citizen guide to DEP	Not Completed

**Some of the incomplete goals are important enough that they should have been accomplished early in the OEA's existence. The OEA should reassess its method of prioritizing goals.**

### Goals Completed

There have been several successful enterprises that the Office has initiated in order to fulfill its mission. Most notable among these is the series of Town Meetings, at which local citizens are invited to share their concerns and opinions and even suggestions for the Advocate to relay to the DEP Director. These have been fairly successful in that they have been the source for several suggestions that the DEP has begun implementing (see Appendix A), and have served well as a source of gauging public concern over regional or local issues.

Another successful example has been the "800" telephone number at which a private citizen with a problem that requires DEP attention may receive guidance and help. The OEA has recently begun using a special form that facilitates its responses to such calls. The concept of this assistance hotline is sound, and has been a major part of the OEA's operations. The OEA estimates that an average of 77 calls per month are received on this line.

In the first two years of its existence, the OEA has made significant contributions in the areas in which it was designed to work. The Town Meetings, the telephone assistance program and other contributions that are found in the appendices attest to this fact. The thrust of this audit report is to address the administrative changes that the OEA could make in order to attain higher levels of achievement.

### **Goals Not Completed or Partially Completed**

There remain a number of planned activities that have failed to materialize satisfactorily. For example, in the Code of State Rules (CSR) section which outlines the duties of the OEA there is a mandate for the OEA, along with the DEP, to develop brochures for dissemination to the public outlining the services that the OEA provides. After almost two years, these brochures have still not been developed as of the writing of this report. This is important in that such a series of brochures could greatly enhance public awareness of the OEA, and would result in greater public access and accomplishment of the overall mission. The brochures should have received higher priority and been completed in the early months of the OEA's existence.

Another similar example is that, according to the CSR, the Advocate is to publish articles through the DEP's Public Information Office (which is being done through the DEP's official newsletter, *In DEPTH*, which is sent to several hundred recipients each month) and through other print media, which has happened somewhat infrequently so far. Five such articles were provided to the audit team on request. Greater exposure through outside print media would enhance the Office's visibility to the public.

In the 1995 Annual Action Plan, the OEA established a goal of creating a "user's guide" to the DEP. Such a publication would be a valuable aid to private citizens who have an environmental concern, but are confused by the size and structure of the DEP and do not know exactly who to ask for assistance. Although this guide was to be created in 1995, it still does not exist.

A final example concerns the previously mentioned Town Meetings. At many of these meetings, the citizens offered suggestions to the DEP about how to better serve the public. Appendix A shows some of these suggestions which were adopted by the DEP and Appendix D shows the locations and attendance levels of the meetings. However, most of these adopted suggestions were never incorporated into official policy, but were begun by a verbal commitment on the part of the Director.

These verbal commitments are not binding beyond the tenure of the current Director. In order for these to be truly effective and lasting changes, they should become official policy in some form. Otherwise it would be very easy for them to disappear when the next administration of the DEP begins. If this were to occur, the long term effectiveness of the Town Meeting system would be jeopardized. The DEP needs to develop a mechanism for deciding which suggestions and other input from citizens to adopt, and how they are to be implemented into policy.

These examples illustrate that, while the OEA is achieving results, there is a potential for much more achievement. There are many good ideas which are not getting done, as these examples show. Certain management control devices could assist the OEA in perfecting its operating processes.

### Cause for Lack of Goal Completion

#### **Insufficient Planning**

A major managerial shortcoming at the OEA is the imprecision of the planning method. According to the rules, the OEA is to develop Annual Action Plans which are to be reviewed and updated each quarter of the year. In 1995, the OEA created such a document, but in 1996 the Office is relying on a Strategic Plan for the next five years. These plans are found in Appendix B. The reliance on a five year strategic plan without breaking it down into a year by year shorter term plan is no substitute for an Annual Plan. The Annual Plan for 1995 was prepared individually, but it is simply a list of ideas and goals in bullet format. It does not contain any details as to how the goal will be accomplished, how much time it will take, what resources will be allocated, what benchmarks will be used to know if the project is on schedule, a target date of completion or what the finished product is to look like. In response to a request from PERD, the OEA provided the information that six of the ten goals of the 1995 plan were completed. However, many of the completed goals were to continue ongoing operations such as the Town Meetings, or to participate in existing programs such as the Watershed Protection Initiative. In such cases the need for detailed planning would be less demanding, but still crucial.

The Strategic Plan is even less precise. It gives less detail about the projects than the 1995 plan, and, being a five year plan, gives no clear indication when the goals are to be completed. This system of planning is inadequate. Without detailed analysis of time demands, resource needs and a schedule for completion, many of these goals would be difficult to achieve. Given the small size of the staff, it would be wise to prioritize these goals and to determine which are to be completed first. Afterwards, the plan should be detailed enough that a reasonable time frame of completion can be formulated.

For example, the goal of creating the citizen guide, found in the 1995 plan, should have included the following details:

1. What specific information the guide will provide
2. When the whole guide is to be completed
3. In what order the sections of the guide will be completed
4. When the different sections will be completed
5. How much of the OEA resources and time will be allocated per week/month

All of these items should be designed according to the existing resources and time available. However, the 1995 plan states little more than the fact that the guide will be written. The use of a five year Strategic Plan in place of a yearly plan is inadequate because there is no schedule for the projects. It is unclear which of the goals are to be accomplished in 1996, which

in 1997, etc. There is, therefore, no individual Annual Plan for 1996. Future plans should include greater detail and be made yearly to fulfill the CSR obligation of Annual Plans.

### **No Time Accountability**

Secondly, the number of goals and duties of the OEA creates a sizeable workload for an office of only two employees. Some of the routine activities can be time consuming. Much time is spent on the telephone dealing with citizens who have problems. Additionally, much time is spent in travel to meetings and in the meetings. For these reasons the OEA should prioritize its activities. In order to prioritize, the Office should keep track of the amount of time spent in these activities on a weekly, monthly and annual basis. With the information collected through this process, the Office would better be able to predict the amount of time needed for these activities in future time frames, and could allocate resources and time for them. It would then be able to plan the remaining time for the accomplishment of the other projects, such as those mentioned in the above section.

Presently, the OEA does not have such a system of accountability for time. The OEA keeps no logs of time spent in travel and meetings, or on the number of phone calls received and the time spent dealing with them. Without knowing the actual amount of time spent on these activities, the OEA would be unable to predict the amount of time available for other projects. Lack of predictable time elements could contribute to an insufficient amount of time being allocated to the accomplishment of other goals. If the OEA can become aware of the amount of time available, it could set for itself more achievable goals, and allocate the time accordingly. This would be a simple management control tool that, if used effectively, could enhance productivity by ensuring that the resources of the Office are not overstretched.

### **Poor Public Opinion Measurement System**

A third cause is that the OEA has no method of measuring its long term effectiveness. According to the CSR, the Office was to have implemented a process to evaluate public opinion on the effectiveness of the DEP. This system was to have been updated periodically. If used properly and updated regularly, such a system would be very useful in measuring the OEA's effectiveness.

However, the OEA currently uses the previously mentioned Town Meeting series as its method of evaluating public opinion. This is not the best method for a number of reasons. These meetings are generally set up to address a particular concern in a local area. Those citizens who attend are usually upset over the issue and frequently have a negative view of the efforts of the DEP to address the issue. Additionally, the fact that citizens attend the meeting might indicate that they are either very concerned about the particular issues of the meeting, or are more active overall in environmental issues. In either case, such individuals are probably not representative of the average West Virginia citizen in regard to attitude toward the DEP. **In short, the use of the Town Meeting as a public opinion measuring device does not ensure a representative sample of citizens.**

Furthermore, the town meetings are each held to address a different topic in a different region of the state. In order to measure the long term trend of public opinion, a standard set of questions would have to be used statewide each occasion. **The Town Meetings are useful for many reasons, and should be continued, but the OEA should not rely on them as a true measure of public opinion.** A scientifically accurate poll should be developed and used on a regular basis to achieve this goal.<sup>1</sup> The results of the poll should be used to track long term opinion. This in turn should be used as a device to assess the effectiveness of the OEA in its effort to make the DEP more accessible to citizens, and to make citizens feel more a part of the system.

### **Staff Size**

Of final concern is the size of the staff itself. When asked, the Advocate responded that she felt that there is need for expanded staff. There was specific mention of needs for an attorney and for technically trained staff. The OEA has been given numerous tasks in the rules and has set ambitious goals for itself in planning. The workload that this creates is, by the admission of the Advocate, burdensome for a two person office. If the OEA is to accomplish all of the goals and duties it is now facing, the DEP should consider expanding the personnel resources available to the office. Alternatively, if no additional resources are possible, the OEA may need to set less ambitious and more achievable goals on an annual basis, dealing only with goals of high priority first.

### **Effects of Goals Not Being Completed**

The overall effect of this condition is that the OEA is not fulfilling its dual roles as effectively as it could. The two major roles are to provide a means by which the average citizen can approach the DEP, and to provide a means through which the DEP can respond to the needs of citizens. The audit did not determine that the OEA has failed to fulfill these roles completely. It did determine that the failure of the OEA to accomplish some of the duties and goals mentioned in this report indicates that the OEA could be more effective if certain practices were initiated.

### **Recommendation 1**

*The OEA should complete the citizen's guide to the DEP and the informational brochures as soon as possible.*

### **Recommendation 2**

*The OEA should keep a log of its routine activities such as telephone time, time spent in meetings, etc., and use this as a guide when determining the amount of time remaining for long term projects.*

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<sup>1</sup>The Survey Research Center at WVU could be a source of collaboration in this endeavor.



### **Recommendation 3**

*The OEA should resume the creation of Annual Action Plans as stated in the CSR, and include in them more detailed analysis of the schedules, resource demands and other aspects of each goal. By quarterly review of the plan, the OEA could assure that it is remaining on schedule, and change the resources or time devoted to projects which are not advancing as planned.*

### **Recommendation 4**

*The OEA should use a scientific method of polling public opinion, even if it must contract for the service, to track the long term level of public satisfaction with the DEP.*

### **Recommendation 5**

*The DEP should evaluate its commitment of resources to the OEA in light of the desired goals of the Office, and provide personnel resources appropriately. If the current level of resource commitments is the desired level, the goals of the Office should be set to correspond with the size of the staff.*

### **Recommendation 6**

*The DEP should devise a mechanism for deciding whether and how to incorporate into policy the changes which result from the suggestions of citizens at Town Meetings or other OEA sources of input. Whether this be through changes in manuals of operations or in written memorandums from the Director, the DEP must design some way of making them more permanent.*



**Issue Area 2: The rules promulgated by the DEP for the operations of the Advocate's Office were filed as Interpretive Rules instead of Legislative Rules.**

When the enabling statute for the OEA was enacted, it included the stipulation that the Director of the DEP "shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of [the West Virginia] code governing and controlling the qualifications, powers and duties of the person to be appointed to the position of environmental advocate". Although evidence suggests that it was the intention of the Legislature that these rules be Legislative Rules, which are reviewed and enacted by the Legislature before having the full authority of binding rules, the statute does not specifically state this. Several different types of rules are authorized under §29A-3, among them are Procedural and Interpretive Rules. Procedural Rules and Interpretive Rules need not be reviewed and enacted by the Legislature to take full effect. The DEP promulgated Interpretive Rules to govern the Environmental Advocate.

Since the enabling statute did not specify Legislative Rules, there is no *per se* wrongdoing in the promulgation of Interpretive Rules. The DEP has stated that this decision was made because the position was to be inaugurated on July 1, 1994, and the enabling statute was created on the last day of the 1994 Legislative session. The rules were to include the qualifications of the position, and in order to fill the position by July 1994, the rules needed to be in place prior to that time. There was, therefore, not enough time to file Legislative Rules to be approved by the Legislature, since this approval could not be granted until the 1995 session, more than six months after the OEA was to begin operations. The DEP decided to promulgate Interpretive Rules, which would take effect immediately. Whether or not the intent of the Legislature was that the rules be Legislative Rules, the fact remains that the Interpretive Rules were not contrary to the language in the enabling statute. It is also a fact that the rules governing the OEA have never come under Legislative scrutiny.

However, the appropriateness of continuing to govern the OEA by interpretive rules is questionable for two major reasons. The first, and most important reason that the rules are improper is that it is contrary to the West Virginia Code, §29A-1-2. According to the definition section, Interpretive Rules are to be adopted (1) "independently of any delegation of legislative power", (2) to "provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered, and (3) are "not intended by the agency to be determinative of any issue affecting private rights, privileges or interests." Legislative Rules, on the other hand, according to the same code section, are to be promulgated (1) "after or pursuant to authorization of the Legislature" and (2) when the rule "is determinative on any issue affecting private rights, privileges or interests".

Three statutory test questions must be asked about a rule to determine if it should be Legislative instead of Interpretive. First, were the rules promulgated after or pursuant to authorization of the Legislature? In the case of the OEA rules the answer is clearly "yes", since it plainly states in the enabling statute that the DEP will promulgate the rules. This indicates that the rules were authorized by the Legislature and therefore should have been Legislative

Rules.

Second, does the rule provide information or guidance to the public regarding the agencies interpretations, policy or opinions upon the law enforced or administered by it? The answer to this question is not quite as clear, but the final two sections of the OEA rules series, Sections 4 and 5, grant powers and outline duties of the OEA. Although the first three sections of the rules series could meet this question's criteria, Sections 4 and 5 do not appear to be explanatory in nature. They do not actually provide information or guidance to the public, but define the role and position of Environmental Advocate. It appears that the answer to question two is "yes" for sections one through three, and "no" for the rest of the rules series.

Third, is the rule determinative on any issue affecting private rights, privileges or interests? It could be argued that the granting of specified powers in and of itself affects private rights, privileges and interests. However, debate over this assertion is negated if attention is directed to section 4.1 of the OEA rules series. Under the provisions of this section, the Director of the DEP may, at his or her discretion, authorize the Advocate to have access to "confidential information". This, then, meets the criteria of affecting private rights and privileges. Becoming privy to confidential information is a privilege, and it affects the rights of those whom the information regards. Section 4.5 of the series also grants the Advocate power to "take such actions as deemed appropriate on behalf of any person". This could easily involve issues affecting rights, privileges or interests. The answer to question three, then, is "yes."

**Having administered the three tests, it becomes clear that Title 38 Series 10 of the CSR, dealing with the OEA rules, meets the criteria which define a Legislative Rule.** This is especially true of Sections 4 and 5 of this Series. Therefore the rules were improperly filed as Interpretive Rules, and should be Legislative Rules.

The second reason that the rules are improper is that the enabling legislation does not enumerate any particular powers or duties to the OEA. It merely states that the position will exist and leaves it to the Director of the DEP to specify the powers and duties of the position. In such a case where the enabling statute is brief and somewhat vague, the only tool the Legislature has to ensure that its original intent is being followed is the review of rules. Since the powers and duties of the OEA have never been reviewed by the Legislature, it is unclear whether the DEP has formulated the Advocate position in the image in which the Legislature originally intended.

A memorandum on file in the Secretary of State's office, written by a Chairman of a major House Committee specifically states that it was the intention of the Legislature that the DEP promulgate Legislative Rules for the position of Advocate. This clearly indicates that the Legislature intended to monitor the position through the review of rules. The filing of Interpretive Rules has deterred the Legislature from exercising its full powers of oversight.

**Recommendation 7**

*The DEP should promulgate new **LEGISLATIVE Rules** to replace the existing interpretive rules and to submit them to the Legislature for approval by the next session. For the sake of clarity, the Legislature should amend the enabling statute (§22-20-1) to state that the rules for the Environmental Advocate shall be Legislative Rules.*



## Fiscal Management

For the first year of the OEA's existence (FY95), the salary of the Advocate came from the general Executive Budget of the DEP. Starting in FY96, the salary of the Advocate was included directly in the budget for the Advocate's Office. This explains the fact that the OEA budget in FY95 was \$23,519.00 and in FY96 it jumped up to \$86,580.00. The difference comes primarily from the inclusion of the costs of the \$40,000 per year salary of the position plus the benefits. The only other employee of the OEA is a secretary who is paid half salary out of the OEA budget and the other half out of DEP funds. This salary is currently \$20,000 plus benefits, with the OEA budget paying \$10,000 plus half of the benefits. Overall the salaries and benefits of the two employees comprise \$68,480 of the total FY96 budget of \$86,580. This represents 79% of the entire OEA budget.

For the next fiscal year, FY97, the OEA has requested a total budget of \$85,009.25, about \$1,500 less than last year. The total benefits cost for the office however is scheduled to be \$771 lower than last year. (This year different benefit calculations are being used.) Therefore the total salary and benefits cost for the next year is projected at \$68,359.25. This will be 80% of the budget.

The Environmental Advocate has been under budget for FY95 and is on schedule to do so again in FY96. Of the FY95 budget of \$23,519, the OEA actually spent \$17,097.43, ending the year with a surplus of \$6,421.57. In FY96, as of the end of March, the OEA had expended \$50,146.76 or 58% of its budget. With just three months left in the fiscal year, it is highly possible that the OEA will once again finish the year with a surplus, possibly a substantial one. The impact of these figures indicates that the OEA is functioning under suitable fiscal management.





## APPENDICES



## Appendix A

### SUGGESTIONS IMPLEMENTED FROM 1994 TOWN MEETINGS

Suggestions for improving the Division of Environmental Protection were made during the 1994 town meetings. After reviewing the suggestions it was discovered that some of the suggestions required statutory or regulation changes; while others were task oriented or policy decisions. Many of the suggestions dealt with issues that were political in nature and unable to be implemented such as "fire director of DEP". The following is a sample of a variety of suggestions that have been implemented since the 1994 town meetings.

**Keep Town Meetings** -- Continuation of the town meeting process was suggested at several of the meetings held in 1994. Additional meetings have been held in Williamson, Petersburg, Pineville and Wardensville.

**Information Meeting** -- Issues surrounding the public's dissatisfaction with the comment process was discussed during the meetings. A suggestion was made to modify the current practice of public hearings at the end of the comment period. The director and public information specialist committed to design information meetings at the beginning of the comment period on a project of major public concern or interest.

Information meetings have been designed to discuss the conditions of the permit early in the process. Early information enables those who comment on a project to be better informed by investigating and asking questions of the permit writer. Information meetings offer an opportunity for the public to raise issues that the permit writer may have overlooked during his/her review and drafting of the permit. Information meetings have been held in Apple Grove, Morgantown, Sharples, Clarksburg and Rowlesburg.

**Citizen Shadow** -- A suggestion was made and implemented creating a citizen shadow of the permit writer during the review of a project of major concern. For instance, a concerned citizen organization may request that a representative meet with the permit writer bi-monthly to discuss the permit application as it changes or develops without requiring continued Freedom of Information Act Requests. The citizen shadow encourages greater cooperation with the public.

**Public Notice Bulletin** -- The public expressed frustration with the public notice process. At the time of the meetings the public was dependent on the legal notices in the newspaper. A suggestion was made that the DEP encourage local media to do a news story or regular column heading on environmental permitting and regulations.

The DEP Public Information Office developed a monthly Public Notice Bulletin outlining permits open for comment and review. The Public Notice Bulletin is mailed to the media, public, consultants and industry. The Office of Environmental Advocate worked with concerned citizens across West Virginia in an attempt to establish an environmental permitting column in their local newspaper.

## Appendix B

### Office of Environmental Advocate 1995 Plan

**Town Meetings** -- As a result of the success of the eight town meetings held in 1994 the Office of Environmental Advocate (OEA) plans to schedule four meetings for 1995. The meetings will be scheduled on a quarterly, seasonal basis: May, July, September, November.

The format and topics of the meetings are open to suggestions. Locations will be selected according to topic. Town Meetings will coincide with public outreach project of the office. Two proposed topics and sites for 1995 are the following:

Williamson, WV -- Water Quality issues in southern, WV  
Canaan Valley, WV -- Issues surrounding watershed protection

**Public Information Office (PIO) Taskforce** -- Taskforce is working to define the way information requests, public meetings, public hearings and public comments are addressed.

**Informational Meetings** -- Attend and organize various meetings, conferences, and workshops to gather information to share with DEP personnel and the public.

**Citizen Shadow** -- Design guidelines for a citizen monitoring unit within the Division of Environmental Protection. A citizen shadow would meet periodically with agency permit writers to receive updates on large permit reviews.

**Citizen Legal Representation** -- Work to develop a legal referral list for citizens who exhaust their options with the regulatory authority and are in need of outside counsel/representation.

**Initiatives designed to compliment the work of the PIO** -- Designing of an agency bulletin board capable of communicating with the public and agency personnel. Expanding the *InDepth* publication.

**Citizens Guide to the DEP** -- OEA will take an indepth look at the DEP in an attempt to develop a series of guides for dealing with the agency. Proposed Guide(s) include the following:

- \* A comprehensive look at each office within the DEP
- \* How to write and follow up a Freedom of Information Act (FOIA) request. What are the agency's responsibilities?

**D R A F T**  
**STRATEGIC PLAN**  
**for**  
**OFFICE OF ENVIRONMENTAL ADVOCATE**  
**1996 - 2000**

**Mission Statement**

Providing citizens with the training and tools needed to be actively involved in helping the agency fulfill its obligation to protect the environment.

**Vision Statement**

The Office of Environmental Advocate is a highly skilled, well trained staff working with all offices of the Division of Environmental Protection to expand communications, training and commitment to public involvement.

**Strategic Goals**

1. Paradigm Shift in Public Involvement.
  - Provide a greater access for involvement.
  - Better trained public.
2. Expand Training/Workshop Programs
  - Respond to local needs.
  - Train Offices of DEP to do their own workshops
  - More training in different regions
3. Expand Staffing Resources
  - Lawyer
  - Technical Resource
4. Expand Training Manuals/Resource Guides
  - Needs Assessment
  - Budgeting
5. Legal Referral System

## Appendix C

38CSR10

TITLE 38  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
MINING AND RECLAMATION

SERIES 10  
OFFICE OF ENVIRONMENTAL ADVOCATE

§38-10-1. General.

1.1. Scope. -- This legislative rule governs and controls the qualifications, powers, and duties of the position of Environmental Advocate within the Division of Environmental Protection.

1.2. Authority -- W. Va. Code §22-1-3, 22-1-3a, 22-20

1.3. Filing Date. -- December 9, 1994

1.4. Effective Date. -- January 9, 1995

1.5. Incorporation by Reference -- Federal Counterpart Regulations -- The Director has determined that there is no counterpart federal regulation. Due to the absence of a counterpart federal regulation, a determination of whether or not to incorporate by reference is not required, and the Director is not required to consult with the Environmental Protection Advisory Council on this rule.

1.6. Determination of Stringency -- Federal Counterpart Regulations -- The Director has determined that there is no counterpart federal regulation, and that the absence of a federal regulation is not the result of a specific federal exemption. This rule is not construed to be more or less stringent than federal regulations.

1.7. Constitutional Takings Determination -- The Director has determined and does state that this rule does not constitute a constitutional taking of real property.

§38-10-2. Appointment, Salary, and Qualifications.

2.1. Appointment - The position of Environmental Advocate will be a full-time

position, will be appointed by the Director, and will serve at the will and pleasure of the Director of the Division of Environmental Protection in accordance with W. Va. Code §22-20-1.

2.2. Salary - The salary of the position of Environmental Advocate will be set by the Director and is subject to future adjustments at the discretion of the Director.

2.3. Qualifications - The Director will receive or solicit applications for the position of Environmental Advocate from persons having the following minimum qualifications:

2.3.1. A citizen and resident of the State of West Virginia.

2.3.2. A graduate from an accredited college or university with a four-year degree in a field of study directly related to the qualifications, powers, and duties of the position as set forth in this rule.

2.3.3. A minimum of two years full-time or cumulative experience in work directly relating to environmental protection, or other public service work or experience which demonstrates the ability to carry out the powers and duties of the position as set forth in this rule.

2.3.4. A working familiarity with some of the legal requirements and programmatic functions of the Division of Environmental Protection.

2.3.5. A demonstrated ability to skillfully communicate (both written and verbal) in a public forum.

2.3.6. A demonstrated ability to use word processing software in a micro-computer environment.

4.9. The Environmental Advocate may not in any official capacity represent any person in, or file on behalf of any person, legal or quasi-legal actions, either in support of or opposed to the Division of Environmental Protection without the expressed approval of the Director, and under the supervision of the Division of Environmental Protection's General Counsel.

4.10. The Environmental Advocate may not in any official capacity organize public campaigns in support of, or in opposition to official positions taken by the Division of Environmental Protection on environmental matters, and will not in any official capacity actively participate in any such organized campaign.

§38-10-5. Duties of the Environmental Advocate Office.

The Environmental Advocate will perform the duties of the position as follows:

5.1. Implement a process to evaluate public opinion on the quality and effectiveness of the functions of the Division of Environmental Protection. The evaluation process should be completed within six (6) months of the date of appointment to office and updated periodically.

5.2. Attend open meetings, public hearings, proceedings, and conferences to collect and distribute information on a range of environmental issues.

5.3 Systematically become familiar with, and acquire a working knowledge of all programmatic functions of the Division of Environmental Protection.

5.4. Provide advice and assistance to citizens seeking resolution of environmental problems. To conserve resources, the Environmental Advocate should concentrate on issues that have wide-ranging, state-wide implications, rather than on isolated or local issues unless they are of a precedent-setting nature.

5.5. Assist the Division of Environmental

Protection to develop brochures outlining the services of the position, as well as other information efforts that are appropriately conducted in concert with the Public Information Office or the Director.

5.6. Participate in public service media programming on environmental issues.

5.7. Assist citizens with obtaining information, interpreting information, and directing citizens to sources of technical information.

5.8. Assist and advise citizens on how to participate in state agency processes, such as public comments on rules, statutory amendments, draft permits etc..

5.9. Write articles for publication by the Public Information Office and other print media regarding advocate activities or areas of environmental interest.

5.10. Direct citizens to appropriate public legal resources such as referral services provided by legal services associations.

5.11. Attend executive and other agency staff meetings, where appropriate, and share information as appropriate.

5.12. Cooperate with the Director and the Division of Environmental Protection in reaching negotiated settlement of issues in dispute between the Division of Environmental Protection and citizens or citizens' groups.

5.13. Develop and submit to the Director an annual action plan for the coming year of position operation which contains realistically achievable objectives. The first year plan of operation will be completed within six (6) months of appointment. Each plan will be revised quarterly to accommodate changes in focus arising from public interest or programmatic needs.

5.14. Prepare an annual statement summarizing the accomplishments of the position to be published by the Public Information Office in the Division of Environmental Protection's annual report.

5.15. The Environmental Advocate will

## Appendix D

### MEETINGS FY '95 - '96

<u>LOCATION</u>	<u>ATTENDANCE</u>
Chester Town Meeting	35
Davis Creek Watershed	28
Elkins Town Meeting	34
Fairmont Town Meeting	46
Huntington Town Meeting	13
Logan Town Meeting	75
Martinsburg Town Meeting	23
Nitro with Pigeon Creek Citizens	12
Petersburg Town Meeting	10
Pigeon Creek with Eli McCoy and Citizens	60
Pineville Town Meeting	28
Rowlesburg Informational Meeting	38
Sharples	32
Sutton Town Meeting	12
Water Quality Workshop - Flatwoods	44
Water Quality Workshop - Nitro	30
White Sulphur Springs Town Meeting	12
Williamson Town Meeting	17



