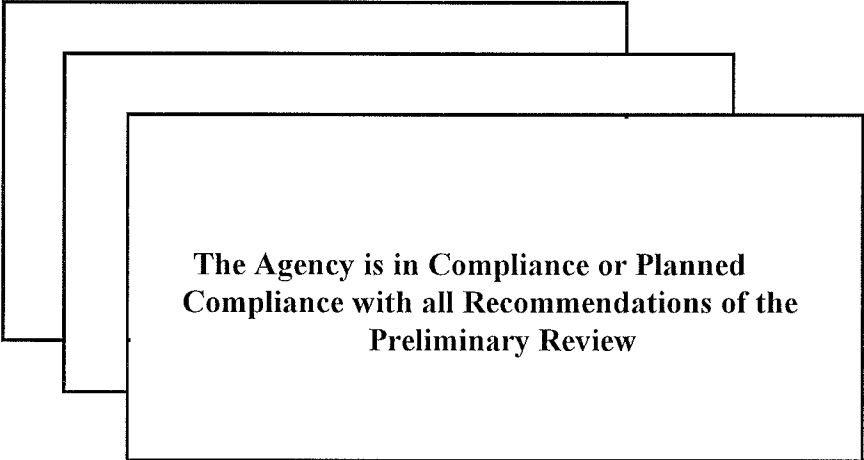


STATE OF WEST VIRGINIA
UPDATE OF
PRELIMINARY PERFORMANCE
REVIEW OF THE
OFFICE OF ENVIRONMENTAL ADVOCATE



**The Agency is in Compliance or Planned
Compliance with all Recommendations of the
Preliminary Review**

OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation & Research Division
Building 5, Room 751
State Capitol Complex
CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890

PE 96-24-65

JOINT COMMITTEE ON GOVERNMENT OPERATIONS

House of Delegates

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Aaron Allred, Legislative Auditor
Office of Legislative Auditor

Antonio E. Jones, Ph.D., Director
Performance Evaluation and Research Division

John Sylvia, Research Manager
Patrick Cadle, Research Analyst

February, 1997

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

February 9, 1997

The Honorable Edwin J. Bowman
State Senate
Building 1, Room 231-WW
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

The Honorable Joe Martin
House of Delegates
Building 1, Room 213E
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Gentlemen:

Pursuant to the West Virginia Sunset Law, we are transmitting an Update of the Office of Environmental Advocate, which will be reported to the Joint Committee on Government Operations on Sunday, February 9, 1997. The issue covered herein is "The Agency is in Compliance with All Recommendations of the Preliminary Review."

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc

Enclosure

The Office of Environmental Advocate (OEA) was created to provide the citizens of the state with an avenue of education and input into the Environmental Protection system and to provide the DEP with information concerning the public attitude toward DEP policies. In June 1996 the Performance Evaluation and Research Division issued a preliminary review report on the OEA. Seven recommendations were made to address the following two issue areas:

1. The adoption of certain management control techniques would raise efficiency and quicken the rate of completion of goals and duties.
2. The rules filed by the DEP for the operations of the OEA were filed as Interpretive Rules instead of Legislative Rules.

This update utilizes the following definitions for level of compliance to recommendations:

Levels of Compliance
In Compliance - The Division has corrected the problems identified in the final draft of the audit report.
Partial Compliance - The Division has partially corrected the problems identified in the final draft of the audit report.
Planned Compliance - The Division has not corrected the problem but has provided sufficient documentary evidence to find that the agency will do so in the future.
In Dispute - The Division does not agree with either the problem identified or the proposed solution.
Non-Compliance - The Division has not corrected the problem identified in the final draft of the audit report.

The OEA is in compliance with five of the seven recommendations and planned compliance with the remaining two.

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

Recommendation 1

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

Level of Compliance: **Planned Compliance**

An informational brochure describing the OEA's duties and activities is in final production. The OEA has been working with the DEP Public Information Office to complete the text and design. The target release date is February 15, 1997. Publication of the citizen's guide to the DEP is projected for March 15, 1997.

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.

Level of Compliance: **In Compliance**

Immediately following the performance review, the OEA attempted to log activities into a form describing hourly activities. Due to the time involved in keeping an hourly log, the time and activity report was modified to track days worked in the office and days spent in the field. The OEA currently uses an internal system of working on long term projects during the hours of 10:00 A.M. to 12:00 P.M. and 2:00 P.M. to 4:00 P.M. The remaining hours are spent returning and responding to phone requests and written requests for assistance.

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.

Level of Compliance: **In Compliance**

The OEA has completed the annual action plan for 1997. The OEA determined that many of the goals contained in previous action plans were unattainable with current resources. The current action plan focuses on constituent service, and large projects have been minimized.

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.

Level of Compliance: **Planned Compliance**

The OEA has reviewed a document entitled "The Benchmarking Report: Measuring Customer Satisfaction" and has contacted WVU's Survey Research Center. The OEA and DEP are evaluating options to assess public attitudes toward the DEP and West Virginia's environment.

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.

Level of Compliance: **In Compliance**

The DEP has no plans to extend OEA resources. As stated in the response to **Recommendation 3**, the OEA has modified its planning methods to reflect the available resources.

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.

Level of Compliance: **In Compliance**

The DEP has integrated town meeting suggestions into policy in the following areas:

1. Rules on Freedom of Information Act Requests
2. Voluntary Remediation and Redevelopment Rule "Brownsfields"
3. Office of Water Resources Watershed Management Program

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

Level of Compliance: **In Compliance**

The DEP refiled these rules as Legislative Rules in compliance with the recommendation. The proposed rules were reviewed by the Legislative Rule-Making Review Committee. The Committee overturned the recommendation, and on November 20, 1996 submitted an opinion that the rules should remain interpretive, and the committee recommended that the proposed Legislative Rules be withdrawn. Appendix A contains the correspondence relating to the Committee's ruling.

Appendix A

RECEIVED
Environmental Advocate Office

NOV 22 1996

WV Division of
Environmental Protection



West Virginia Legislature
Legislative Rule-Making Review Committee

Room NB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Adm. Assistant

November 20, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Ms. Wendy Radcliff
Office of Environmental Advocate
10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Office of Environmental Advocate

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

The Committee recommended that the rule proposed by the Division of Environmental Protection, Office of the Environmental Advocate be withdrawn and that the Division refile the proposed rule as an interpretive rule. The Committee made the recommendation because the proposed rule does not contain any provisions which would require the proposed rule to be filed as a legislative rule. In the Committee's counsel's opinion, the proposed rule is more appropriately an interpretive rule.



DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
DIRECTOR

November 20, 1996

The Honorable Joe Martin
West Virginia Legislature
Room 213-E, Capitol Complex
1900 Kanawha Boulevard, East
Charleston, WV 25305

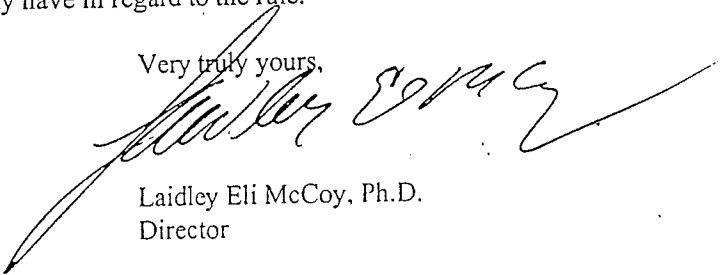
Dear Delegate Martin:

Per the request by the Joint Committee on Government Operations, the Division of Environmental Protection (DEP) filed the current interpretive rule governing the Office of Environmental Advocate (OEA) as a legislative rule August 15, 1996.

During the November interim legislative session, the Legislative Rule-Making and Review Committee (LRM&R) instructed the DEP to withdraw the legislative rule and re-file the rule governing the duties of the OEA as an interpretative rule.

Upon instruction by the LRM&R committee, the DEP is prepared to file the rule governing the Office of Environmental Advocate as an interpretive rule. Realizing that this action is in conflict with the recommendation of your committee, I would like to extend the invitation to discuss any specific suggestions or recommendations you may have in regard to the rule.

Very truly yours,


Laidley Eli McCoy, Ph.D.
Director

LEM/as



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

November 26, 1996

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

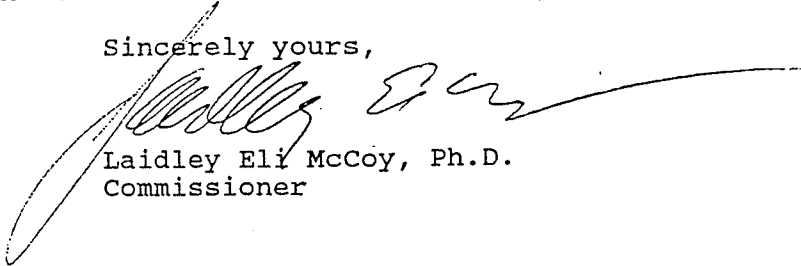
RE: 60CSR1 - "Office of Environmental Advocate"

Dear Ms. Cooper:

In response to the recommendation of Legislative Rule-Making at their meeting on November 18, we are requesting withdrawal of the above-referenced Legislative rule as it was filed in your Office on August 30, 1996. After review by the Legislative Rule-Making Review Committee (copy attached), it was determined that the rule should be refiled as an Interpretive rule.

Therefore, since this rule has gone through all appropriate rule-making procedures as a Legislative rule, we are also requesting your approval to refile 60CSR1 as an agency-adopted Interpretive rule with an effective date of December 30, 1996.

Sincerely yours,



Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

cc: Mark A. Scott
Joe Altizer
Dr. Antonia Jones
Joe Martin
Wendy Radcliff
Carrie Chambers

