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## COMMENT

## The Role of the "Region" in Air Pollution Control

*Arnold W. Reitze\**

THE FEDERAL GOVERNMENT is in the process of designating federal air control "regions" as a new basic unit for air pollution control. This unit is neither federal nor state in nature but a combination of the worst features of other usually impotent local

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government units. It has no power, its responsibilities are poorly defined, and no source of financial support has been provided for its operation. It will have concurrent and often overlapping responsibilities and powers with already existing governmental bodies; yet it will be dependent upon these

state and local organizations many of which are for all practical purposes nonfunctional. It is this newly created, grotesque administrative unit that is the subject of this Comment.

When in recent years it became generally recognized that our uncoordinated and desultory governmental regulation process, largely based on local ordinances, was unable to provide the broad range of institutional responses necessary to solve our air pollution problems, Congress responded with a series of acts which eventually led to the important Air Quality Act of 1967.<sup>1</sup> This act provided for the involvement of the federal, state, and local governments in a cooperative program to achieve improved air quality. The approach chosen was similar to that used in the Water Quality Act of 1965<sup>2</sup> but with some significant differences. Under the 1967 Act the federal government through the Secretary of the Department of Health, Education and Welfare (HEW) provides technical and financial assistance to state and local governments to assist them in develop-

<sup>1</sup> 42 U.S.C. 1857b-1 (Supp. III, 1967) [hereinafter cited by section number without reference to the *United States Code*].

<sup>2</sup> 33 U.S.C. 466 (Supp. III, 1967).

ing air pollution prevention and control programs.<sup>3</sup> But, the Secretary also issues criteria of air quality necessary for the protection of the public health and welfare.<sup>4</sup> Thus, the federal government can determine what is acceptable air quality<sup>5</sup> — a power they do not have in the field of water quality regulation. The Secretary must also provide information concerning the control techniques which can be utilized to achieve the air quality goals set forth in the federal criteria.<sup>6</sup>

The states also have an important role in pollution abatement. After the Secretary of HEW issues air quality criteria, recommends control techniques, and designates a specific control region, the governor of a target state must, within 90 days, file a letter of intent indicating that his state will comply with the Air Quality Act. The Act then requires that within 180 days after filing the letter of intent the governor will hold public hearings and adopt quality standards applicable to the control region or regions.<sup>7</sup> Within an additional 180 days, the state must adopt a plan for the implementation, maintenance, and enforcement of the air quality standards.<sup>8</sup>

The purpose of joint federal and state activity is to develop a regional air pollution program.<sup>9</sup> Air pollution can only be abated when specific steps are taken to reduce the harmful emissions of specific pollutants. While coordination to provide a uniform response is useful, only a local program designed to meet local needs can effectively achieve a reduction in the degree of air pollution.<sup>10</sup> The success or failure of the federal program will depend upon the "front line" action which takes place within the control regions.

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<sup>3</sup> For a comparison of the federal air pollution and water pollution programs, see Bermingham, *The Federal Government and Air and Water Pollution*, THE BUS. LAW. 367 (Jan. 1968).

<sup>4</sup> § 107(b) (1).

<sup>5</sup> Air quality criteria have been released for particulate matter and for sulfur oxides.

<sup>6</sup> § 1857c-2.

<sup>7</sup> § 1857d(c) (1).

<sup>8</sup> For information concerning the mechanics of complying with the Act, see Martin & Symington, *A Guide to the Air Quality Act of 1967*, 33 LAW & CONTEMP. PROB. 239 (1968); NATIONAL COAL POLICY CONFERENCE, INC., A GUIDE TO THE AIR QUALITY ACT OF 1967 (1968).

<sup>9</sup> Section 1857c-2(a) requires the Secretary to define atmospheric areas based on factors of climate, meteorology, and topography. This has been done. Eight atmospheric areas were designated as required, but the Act is vague as to the significance or application of these areas. Air Quality Control Regions are designated under section 1857c-2(a) (2) without reference to section 1857c-1(a) (1).

<sup>10</sup> The program could, of course, be both federal and local, for example the programs of the Soil Conservation Service or the grazing programs of the Bureau of Land Management clearly illustrate such dual responsibility.

These regions are designated on the basis of political boundaries, the degree of urbanization, and atmospheric conditions.<sup>11</sup> In June 1968, the National Air Pollution Control Administration of HEW named 32 of the largest and most severely polluted urban communities in the country as the initial air quality control regions. Ohio, which prides itself in its national leadership, continued to maintain this position of eminence by having five of its cities (Cincinnati, Cleveland, Dayton, Toledo, and Steubenville) within the first 32 control regions. By 1970 an additional 25 control regions will be formally designated. The control regions will then include 70 percent of our urban population.<sup>12</sup>

The Greater Metropolitan Cleveland Intrastate Air Quality Control Region was formally designated (as was the Cincinnati Region) in May 1969. The Cleveland Region is to consist of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Stark, and Summit Counties.<sup>13</sup> Based on considerations of pollution sources, area interdependence, and atmospheric conditions, this region's boundary seems to be logically chosen. By making the boundary coterminous with existing county boundaries, the financing and regulation of pollution control measures are simplified.

Under the federal law the regions must have uniform standards within the region and an overall long-range abatement plan. Thus, existing county and municipal public health and air pollution control organizations will still be required. Many of these existing organizations can best function by being incorporated into the regional organization. Thus, implementation of the regional plan may be accomplished by the existing county and municipal organizations, while direction and control will be exercised by the regional authorities. The framework for an air pollution control program is being provided by the federal government. Local action will determine whether such control ever achieves the desired emission reductions so as to provide results that can be verified by objective measurement.

The condition of our local waters after 3 years of government action is mute testimony to the efficacy of our governmental clean-

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<sup>11</sup> § 1857c-2(a) (2).

<sup>12</sup> U.S. DEP'T OF HEALTH, EDUC. & WELFARE, NAT'L AIR POLLUTION CONTROL ADMINISTRATION, COMMUNITY AFFAIRS BULLETIN (Apr. 1, 1969). These recommendations were adopted in May 1969.

<sup>13</sup> U.S. DEP'T OF HEALTH, EDUC. & WELFARE, NAT'L AIR POLLUTION CONTROL ADMINISTRATION, REPORT FOR CONSULTATION ON THE GREATER METROPOLITAN CLEVELAND INTRASTATE AIR QUALITY CONTROL REGION (Feb. 1969).

up programs relating to our water resources.<sup>14</sup> The air control program will be even more difficult to successfully promote. Only by frankly recognizing the extraordinary difficulty of the task can progress be made, for obstacles exist at every level. Man himself is the most serious obstacle, since he is personally responsible for creating a pollution problem that is global in nature and involves a threat to his existence as a species. Regardless of the long term consequences of continued air pollution, the immediate task of any regional authority is frustrated by the desire of many powerful interests, sometimes overt, more often covert, to prevent pollution control because they either find air pollution to be profitable, or conversely pollution controls to be expensive.<sup>15</sup> Only by recognizing the difficult task of making a regional air pollution control program function can we hope to develop the political will which is a prerequisite motivating force in finding a viable solution to the continued deterioration of our ecosystem.

The most difficult proposition to accept is that even if an air pollution control region is successful in its endeavors, it is unlikely that the air will ever be of a better quality than it is today. The reason for this is that air pollution is a problem created by people and their products — the amount of air pollution present in our atmosphere is directly proportional to the size of the world's population and increasing affluence. The population of the world is increasing at a rate of about 180,000 people every 24 hours. Enough people are added to the world each month to create a city the size of Chicago.<sup>16</sup> In the United States we may expect a population of 400 million persons sometime in the early part of the 21st century. Our present population is placing a severe strain on our environment. Whether man can survive as a biological organism in the highly populated world of the future is questionable.<sup>17</sup> If he does survive, he can expect to be totally regulated by the state, since the degree of human interdependence created by the density of the population will preclude freedom as we know it today.<sup>18</sup>

Air pollution controls alone will impose substantial regulation on man's way of life, for only products and processes that have min-

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<sup>14</sup> See generally Reitze, *Wastes, Water and Wishful Thinking: The Battle of Lake Erie*, 20 CASE W. RES. L. REV. 5 (1968).

<sup>15</sup> See generally E. MURPHY, *GOVERNING NATURE* (1967).

<sup>16</sup> *POPULATION IN PERSPECTIVE* at v (L. Young ed. 1968).

<sup>17</sup> B. COMMONER, *SCIENCE AND SURVIVAL* (1966).

<sup>18</sup> See Yeager, *Technology v. Liberty*, 54 A.B.A.J. 759 (1968); Mosk, *The Individual in a Crowding World*, TRIAL MAGAZINE 39 (Feb.-Mar. 1969).

imal pollution effect will be allowed to be produced and used. This is true since man's products and production processes are even greater contributors to the air pollution problem than is man himself. As a general rule, the higher the "standard of living" the greater will be the destruction to the environment. The United States, with about 6 percent of the world's people, consumes one-half of the world's non-renewable resources. The consumption of these resources precipitates the disposal problem which is presently being solved at the expense of our land, water, and air resources. This disposal usually involves an oxygen-combining process which results in air pollution — for example, burning industrial wastes. A growing economy thus carries with it the continuing qualitative destruction of the environment.

If we are to control the destruction of our habitat, we must recognize that virtually every new product and every technological advance has an undesirable side effect. This negative aspect of physical and economic growth must be evaluated. At the present time, our high standard of living is possible only by having two-thirds of the world's population continue to exist in a condition of semi-starvation while the remaining one-third swims in its own affluent.<sup>19</sup> It is doubtful that there is even sufficient oxygen to have the entire world live the affluent life of Americans. If the Asian continent possessed the same ratio of automobiles to population that is found in America, the pollution emitted would approximate 750 million tons per year. Whether the earth has sufficient green plants to restore this oxygen is questionable.<sup>20</sup>

Now that the total destruction of our environment is becoming a very real possibility we must ask ourselves what price we are willing to pay for continued safety. The highest price would be to fail to act, for then we pay with our lives or the lives of our children. It would appear then that the intended function of this present legislation is to bide time until the public realizes the impact of air pollution, and then demands meaningful legislation — in other words, don't rock the boat until the public makes waves.<sup>21</sup> Ulti-

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<sup>19</sup> See generally P. APPLEMAN, *THE SILENT EXPLOSION* (1966); P. EHRLICH, *THE POPULATION BOMB* (1968).

<sup>20</sup> These figures are obtained by increasing the transportation pollution of the United States by a factor of 10 to account for the Asian population of 2 billion. See NAT'L ACADEMY OF SCIENCES NAT'L RESEARCH COUNCIL, *WASTE MANAGEMENT AND CONTROL* 11 (Pub. No. 1400, 1966).

<sup>21</sup> See Reitze, *Environmental Pollution Control — Why Has It Failed?* (to be published in the forthcoming October issue of the A.B.A.J.).

mately the control of both population growth and product development will be imperative.

### I. THE FEDERAL GOVERNMENT AND THE REGION

The federal government will assist the region with money, technical advice, and enforcement mechanisms which are intended to force the states to act.<sup>22</sup> All three forms of assistance will be of minimal value to the region unless the citizenry of that region become vigorous activists and achieve a more meaningful federal contribution. Programs can be designed by Congress, but they require money. The federal government in fiscal 1969 allocated only 1.9 percent of its total spending for all natural resource programs. For fiscal 1970 the share of the federal budget devoted to natural resource programs is expected to be lower. It is important to note that merely because Congress authorizes programs does not mean that these programs will actually receive an appropriation of money. Congress could *authorize* programs for pollution abatement totaling \$50 billion, but such authorization will be of no effect until the necessary *appropriations* are made.

Air pollution authorizations for 1968 totaled \$109 million, but only \$64.2 million was appropriated. Between 1966 and 1970 the gap between what was authorized for air pollution control programs and what was actually appropriated was \$189.4 million. However, it must be emphasized that even *the present authorizations are ridiculously low*. They represent only a little over 1 percent of what the federal government estimates air pollution costs the American people, and these costs do not include the health costs inflicted by air pollution.<sup>23</sup>

The federal government will also obstruct the programs of the regions by limiting the pollution sources that can be regulated. The most serious source of pollution is the automobile,<sup>24</sup> as its emissions account for about 60 percent by weight of all atmospheric pollutants.<sup>25</sup> However, the federal government has seen fit to prohibit

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<sup>22</sup> 42 U.S.C. 1857 (1964).

<sup>23</sup> THE CONSERVATION FOUNDATION LETTER (Mar. 17, 1969).

<sup>24</sup> It is estimated that in New York City each day, automobile traffic produces 8,300,000 pounds of carbon monoxide, 1,000,000 pounds of hydrocarbons, and 212,000 pounds of oxides of nitrogen. Heller, *An Examination of Alternatives to the Gasoline Automobile*, U.S. DEP'T OF HEALTH, EDUC., & WELFARE, PUBLIC HEALTH SERVICE, POWER SYSTEMS FOR ELECTRIC VEHICLES (1967).

<sup>25</sup> Hanks & Kube, *Industry Action to Combat Pollution*, HARV. BUS. REV. (Sept.-Oct. 1966).

the states or any political subdivision thereof from requiring pollutant control devices on new motor vehicles.<sup>26</sup> This approach might bring national uniformity, but it also limits the effect of a regional program.<sup>27</sup> Even if the region cannot regulate new automobiles, it can develop regulations that apply to all vehicles.<sup>28</sup> This it must do if it is to abate pollution.

The federal government will provide technical advice and set air quality criteria. It has already released criteria for particulate matter and oxides of sulfur. Nitrogen oxide criteria are projected for release in the early 1970's.<sup>29</sup> This is a beginning, but much more is needed. Even the goals postulated by the criteria will be difficult to achieve for the federal government, acting through other agencies which are not directly concerned with pollution problems, inadvertently constructs obstacles to air pollution programs. For example, the sulfur oxide level can be reduced if low sulfur fuel is used in electric generating plants. Yet, the Federal Power Commission has not been willing to have natural gas used for generating purposes.<sup>30</sup> Actions of the Department of the Interior are also important, for they affect the amount of low sulfur petroleum that is available in this country.<sup>31</sup>

The lack of effective pollution control devices also hampers program development. Much more research effort is needed in both the theoretical and applied sciences if we are to develop the technology necessary to abate air pollution. The efforts of a slow moving federal government are not adequate for the sources of pollution are being produced at an accelerated rate. Even with our population explosion, American industry can still produce automobiles twice as fast as the country produces people. By 1977 we can expect an additional 30 million motor vehicles, each adding to the

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<sup>26</sup> California is an exception. See § 1857f-6a, and Wall Street Journal, May 5, 1969, at 5.

<sup>27</sup> It is interesting to note that the automobile industry chose national standards, yet other industries such as the foundries object to a uniform national emission standard.

<sup>28</sup> § 1857f-6a(c).

<sup>29</sup> See U.S. DEP'T OF HEALTH, EDUC., & WELFARE, PUBLIC HEALTH SERVICE, AIR QUALITY CRITERIA FOR PARTICULATE MATTER, SUMMARY AND CONCLUSIONS (1969); U.S. DEP'T OF HEALTH, EDUC., & WELFARE, PUBLIC HEALTH SERVICE, AIR QUALITY CRITERIA FOR SULPHUR OXIDES, SUMMARY AND CONCLUSIONS (1969).

<sup>30</sup> Rein, *Obtaining Boiler Fuel Gas to Reduce Air Pollution: The Policy of the Federal Power Commission*, 33 LAW & CONTEMP. PROB. (1968).

<sup>31</sup> The Oil Import Administration of the Department of the Interior acts under Presidential Proclamation 3279 of March 10, 1959, as amended 32A, C.F.R. ch. X (1969). This proclamation imposes restrictions upon the importation of crude oil.

present 133 million tons of aerial garbage discharged each year.<sup>32</sup> We must advance our technological expertise more rapidly merely to keep pace with each year's additional pollution sources. This we are not doing. If our space program were advancing as rapidly as our environmental program, a major Icarus would be trying to reach the sun in a space ship of oscillating bird feathers.

The federal government has provided a series of sanctions in the event the states do not cooperate in developing an air pollution abatement program.<sup>33</sup> These sanctions are similar to those used in the water pollution control legislation. They can be characterized by saying that they probably will not work, since if used, they would delay the development of a program for many years. We cannot afford to wait — our health is at stake. Recently the State of Iowa told the federal government, in so many words, that it is not going to follow federal prescriptions in dealing with their waters.<sup>34</sup> They are likely to get away with their stand. Such intransigence cannot be tolerated in any control region dealing with air pollution. Some regions which are interstate may feel that pollution is no real threat to their existence since someone else is being harmed. But here in Cleveland we breathe our own emissions, and most communities do likewise — therefore, it is imperative that we demand state and local governments to actively participate in this federal air pollution program.

Citizen involvement is critically needed to develop a proper legislative framework for an air pollution program, because of the unusual democratic process provided in the Air Pollution Act. The federal government by establishing criteria will inform the citizenry that a specific concentration of a given pollutant is harmful. They will also provide information concerning the available control techniques. Each region will then hold hearings and in a very democratic manner decide whether that region will adopt the federal criteria. This may be the rebirth of the democratic process involved in the New England town meeting as compared to representative democracy or government by a technocratic bureaucracy. We have never been allowed to decide how many cases of small pox we are willing to have in our communities, and the federal government keeps trying to stamp out tuberculosis without having "grassroot"

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<sup>32</sup> See note 24 *supra*. COMMITTEE ON PUBLIC WORKS, AIR QUALITY ACT OF 1967, S. REP. NO. 780, 90th Cong., 1st. Sess. 10 (1967).

<sup>33</sup> § 1857d.

<sup>34</sup> N.Y. Times, Apr. 21, 1969, at 22.

hearings. Perhaps, the 1967 Act portends a new wave of citizen responsibility. Defense policy could be decided by having local communities hold hearings to decide the proper mix of defense systems. Or to use a more related analogy, a community faced with a health problem caused by rats would make a survey to determine the acceptable level of rat population. Then the results of studies of the various species of rats would provide data as to which species required extermination first. Investigation of rat control technology would provide information as to the cost of control. Citizens would then have the information necessary to reject expensive techniques. Finally hearings would be held so that the community could express its opinion as to the desired level of rat population and specie mix. Then a plan of rat extermination would be developed and prosecuted. It would not be efficient but it would be totally democratic.

The air pollution program will either maintain or effectively stifle citizen interest by having many hearings. Since there are five regions in Ohio there will be five hearings for sulfur oxides. When the hearings on sulfur oxides are completed we should be ready for hearings on nitrogen oxides, and still later we can debate the merits of carbon monoxide poisoning. For many years we will be able to have hearings. Some communities may opt for clean air and some others may decide cancer is more desirable. By the time standards are set for the dozens of different pollutants new updated criteria should be available for the oxides of sulfur and we can start over again.

As analytical statistical information becomes more sophisticated, each community will be able to choose the level of deaths from respiratory diseases that it finds desirable. These hearings then may be used to build community cohesiveness since hundreds of people with little knowledge of the subject will be involved in intimate deliberation for many years in deciding whether the federal scientists' conclusion that air pollution is harmful to your health should be accepted. The Air Pollution Act of 1967 may not improve the atmosphere but it should provide for additional employment. It may also act to give a sense of participation in government. Although the American people have little voice in determining the issues of war and peace, or in determining the need for new billion dollar war toys, every citizen can be secure in the knowledge that he can have his say on whether sulfur oxide levels should be one-tenth of one part per million.

Assuming that the hearings result in a setting of a standard which is similar to the federal criteria, the atmosphere will not improve until an implementation plan is developed which will require specific emission sources to reduce their discharge of pollutants. It is interesting to note that the 1967 Act provides for minimal federal responses if the state does not set standards that meet federal approval. After a long administrative procedure the federal government can set standards. If one state is involved, action can be taken only if the governor of that state requests such action. After all administrative actions are complete the standards are still subject to a trial de novo which could probably include a review of the HEW criteria and recommended control techniques.<sup>35</sup>

However, the 1967 Act is not clear as to whether HEW can promulgate a federal implementation and enforcement plan. The Act should certainly be amended to clarify this point. Assuming the federal government has the power to promulgate such a plan, the delays that would follow from federal action still require that the state act first to protect its citizens.

## II. THE STATE GOVERNMENT AND THE REGION

The state government is given substantial responsibility under the federal act. The state government's general disinterest in the subject and their lack of concern for urban problems make this level of government the natural choice for having primary responsibility for the air pollution abatement program. The governor, as we have seen, is required to hold hearings, set standards, and develop a plan to achieve the desired standards. Considerable flexibility is given to the states since the 1967 Act does not specify what type of governmental organizations, if any, will be created to achieve the Act's goals. This means that a concerned citizenry is needed. A case in point is the Ohio government's notorious and cavalier lack of concern for the environment. A few illustrations may be in order. The attempt to prevent water pollution started somewhat earlier than the efforts to clean up the air. The progress in this endeavor provides an illustration of the problems and solutions that can be expected in dealing with air pollution. After 4 years of effort, Lake Erie is more polluted than it was in 1965. The tributaries of the lake are just as filthy as they were several years ago, and the State of Ohio still has not supplied an urban area in the Lake Erie Basin with any funds for pollution abatement. The Ohio

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<sup>35</sup> § 1857d(c).

Water Pollution Control Board does virtually nothing to abate pollution.<sup>36</sup> Its attitude can be gleaned from its 16-year renewal of the sewer discharge permits for Independence, Ohio.<sup>37</sup> Recently, Mr. George Eagle, who as the state's chief health engineer runs the water pollution program for Ohio, said he was using Mr. John Kinney as a consultant and had been doing so on a regular basis for 7 years. Mr. Kinney, an outspoken critic of pollution controls, also serves as a consultant to Republic Steel.<sup>38</sup>

As has been illustrated the administrative agencies of Ohio have little interest in pollution control — the legislature is no better. Some legislators introduce protective legislation but little is passed into law. What does get through the legislature is so watered down that it serves no functional purpose. Even a bill which requires no funds has difficulty becoming law. For example, House Bill No. 2, which would take away the Department of Natural Resource's power to allow oil drilling in Lake Erie, is being blocked by the Rules Committee. House Bill No. 11, providing for air pollution control, was delayed for an inordinate period of time in the Reference Committee. This bill has many weaknesses, but no agency of the government proposed any alternative legislation for state-wide air quality control. The result is that it is unlikely that any new air pollution legislation will be passed this year except perhaps for some tax exemption proposals.

The present state statute is absurdly inadequate. This statute, passed in 1967, created a state air pollution control board.<sup>39</sup> The board was given broad powers to make regulations and develop programs. To say that they have accomplished nothing would be charitable. As is more often the case than not in pollution abatement programs they were given a responsibility but no funds to carry it out. Their budget is about 5 percent of a similar board in New York State. Their staff, of about nine, does not compare favorably with the Los Angeles County staff which numbers well over 300 persons.<sup>40</sup>

The Act under which they work also precludes their effectiveness. If one wished to draft legislation that would never result in

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<sup>36</sup> See note 21 *supra*.

<sup>37</sup> The Cleveland Press, Apr. 11, 1968, § c-2.

<sup>38</sup> Klaric, *Critic of Pollution Control Serves as Consultant to State*, in The Cleveland Press, Apr. 19, 1969.

<sup>39</sup> OHIO REV. CODE § 3704.04-3704.99 (Page Supp. 1969).

<sup>40</sup> See O'Fallon, *Deficiencies in the Air Quality Act of 1967*, 33 LAW & CONTEMP. PROB. 275, 295 (1968).

air quality improvement, the Ohio law could be used as a model. When one realizes the similarity between the Ohio statute and the federal law, it becomes difficult to maintain any optimism for success. Like the federal law, the Ohio statute is oriented toward the formulation of air quality standards. Rather than stopping pollutants they are expected to develop standards after considering:

1. The character and degree of any injury to human health or welfare, plant or animal life, or property from concentrations of the contaminant.
2. Cost-benefit relationships to be derived from compliance with the standard.
3. Frequency and duration of the contaminant in the ambient air.
4. Topography and meteorological conditions which affect air pollution.<sup>41</sup>

The state is thus burdened with the need to show the harmful effect of concentrations of contaminate for each locality. To comply with the Ohio Act requires the state to continuously monitor the air and maintain an emission source inventory. If the standards are not exceeded, the Ohio Air Pollution Control Board may have no authority to establish emission standards or to deny a permit.<sup>42</sup> We have, therefore, created a system which maximizes the cost and complexity of the administrative procedures necessary to solve a health problem. Could our modern urban society survive if all governmental decisions or even all health regulations required such extensive preparation prior to the government acting to protect the citizenry? Now, under the federal act, the state air pollution control board must also develop a program to implement the regional program.

We are thus placed in a position of having to develop a state program from the beginning. If all of Ohio's laws concerning air pollution were abolished, there would be no appreciable increase in the levels of air pollutants. It is fair to say that the executive and legislative leadership of this state have had little interest in environmental protection. A federal program which is so completely dependent upon state cooperation can only be developed if there is a basic change in attitude on the part of the state leadership — from wooing industry, since this is the source of campaign funds, to providing for clean air before industrial magnets and laborers alike choak to death in the polluted cities. Unfortunately, action is unlikely unless it is provoked by an aroused citizenry.

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<sup>41</sup> OHIO REV. CODE § 3704.03 (D).

<sup>42</sup> OHIO REV. CODE § 3704.03 (F) (3) (Page Supp. 1968).

### III. LOCAL GOVERNMENT AND THE REGION

The role of the local government in the federal air pollution control program is not yet clear. The state-oriented federal program leaves implementation to the discretion of the states. The state may or may not choose to use existing local government organizations or to allow new local government organizations to develop.

The county would be an excellent governmental unit to carry out the daily administrative actions necessary to meet state standards. Under this approach a small regional organization, reporting to the Ohio Air Pollution Control Board, could coordinate county activities for those counties comprising the region. Since the regional boundaries follow existing county lines this approach is reasonable. Although Ohio counties are severely restricted in the power they wield, such may not always be the case since counties are generally the governmental unit directly implementing governmental programs — especially recently with urban counties being in the vanguard for federal programs designed to eradicate urban blight. They, or some equivalent, could soon become the basic government unit of a new urban America. At the present time Cuyahoga County is considering the adoption of an alternative form of county government under Chapter 302 of the *Ohio Revised Code*. This might provide a basis for their accepting increased responsibility for environmental matters. But at the present time no county in Ohio is a significant factor in air pollution control, though several counties are developing programs that may soon have a meaningful impact.

Another possibility for air pollution control is the use of an independent county wide, or regional state government agency. This type of agency would be a miniature TVA charged with carrying out an air pollution control program. It could be used to meet the state standards and yet have additional powers, particularly regarding pollutants not covered by the federal program.

Municipal governments have traditionally possessed air pollution ordinances. These ordinances are generally patterned as nuisance abatement acts and have little relevance to the problems of our sophisticated technology. Some municipalities have developed more modern acts but yet no money is provided for their enforcement. Air pollution control is not cheap, for it requires a staff to monitor pollution sources and deal individually with the many emitters of

pollutants. Most large cities have such a staff, a budget, and an air pollution program. At least four of the five communities in Ohio chosen to be control regions have such programs. Although these municipal programs are not yet able to prevent pollution, they are much more meaningful than the state's programs. Cleveland, on a per capita basis, spends 30 times more than the State of Ohio for air pollution control, and in dollars their program is more than double that of the state's. The cities of Cleveland, Akron-Barberton, and Canton, all of which are part of the Greater Metropolitan Cleveland Intrastate Air Quality Control Region spend 3.5 times more than the state government of Ohio and have a combined staff which is six times greater than that of the State of Ohio.<sup>43</sup>

These figures for Ohio are not unique. In most states the largest city has a much better program of air pollution control than the state.<sup>44</sup> As air pollution is primarily an urban problem this development is not surprising.

What is disquieting is that the states, which have such a poor record concerning environmental protection activities, have been given so much control in effectuating the federal program. This does not mean that the municipal programs are successful, for in Ohio they are generally not successful. Cleveland's program, by far the largest in Ohio, has been an unqualified dismal failure. Cleveland is, however, developing a modern pollution abatement code which should be promulgated in the near future. They are also planning and budgeting for a better enforcement program.

A plan to create regional authorities subject to federal control, but without state involvement would have made sense from an environmental science, if not a political, point of view. Few people desire an expanded central government, but the states have generally shown themselves incapable of providing for the needs of their citizens. This vacuum is generally filled by federal programs.

The immediate problem is to make the 1967 Air Pollution Act an effective and working program. The federal program is no panacea for our problems. It does not obviate the need for existing organizations; rather, it calls upon us to channel our efforts so as to achieve air pollution control on a regional basis. Living with the Ohio State Government should make no one sanguine. The goal must be tenaciously pursued. The required hearings will necessitate a strong showing of support and an intelligent articulation of

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<sup>43</sup> See note 40 *supra*.

<sup>44</sup> *Id.*

a demand for strong standards. The development of a program for implementing the standards will require even more effort, for it is here that those who will be subject to abatement requirements will seek to avoid them. The present Ohio law gives them substantial opportunity to do so. The regional standards and plans must be designed to prevent polluters from avoiding the requirements of the regional plan. If we are vigilant, vigorous, vociferous, and vulpine we can succeed — we must succeed.

# CASE WESTERN RESERVE LAW REVIEW

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