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POLLUTION CONTROL BOARD, AT CHICAGO
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I'd like to give you a brief progress report on the state pollution control program. Before July of 1970, the State had separate boards for air and water pollution, composed of part-time volunteers with no access to information, chosen largely to represent various affected interest groups. Their staffs were grossly underbudgeted and, in my subjective opinion, often undermotivated. There were regulations, but there was no adequate effort to enforce them. Most of them did not apply within the City of Chicago. There were separate programs for solid waste disposal, radiation, and the protection of public water supplies. There was no program for noise control. If a question of enforcement arose in the field of air or water pollution, the boards acted as judges and their own staffs as prosecutors. Yet the boards had no effective sanctions to impose, for penalties could be sought only in court.

Many of these deficiencies, and others, were corrected by the Environmental Protection Act of 1970, for which I think we all owe Governor Ogilvie a large debt of gratitude. In brief that statute created three new agencies divided on functional lines, each with authority over the entire field of pollution. There is the Environmental Protection Agency, which investigates pollution conditions and pollution sources, files and prosecutes pollution cases, and makes proposals for new regulations. There is the Pollution Control Board, which has two main jobs: It acts as a judge to decide cases brought by the Agency or by private parties, and it adopts regulations. There is the Institute for Environmental Quality, which acts as a research arm for both the Agency and the Board, providing outside experts to bring together what scientists and engineers know about pollution problems and to help present that knowledge in a form usable in constructing informed regulations.

We have had a year and a half of experience with this new system, and I think it is beginning to operate as was anticipated.

The Board is composed of five members, each a full time state officer, with his own administrative assistant and secretary. Apart from this, our staff consists of a half dozen or so administrative people. The statute contemplates that we will have manpower enough to exercise our own judgment on records made by others but not enough to engage in any very deep research of our own. This is entirely as it should be in individual pollution cases, in which we act as judges on the basis of a record presented to us by adversary parties. In rule-making

proceedings our limited staff represents a policy decision to make us highly dependent upon the Agency and the Institute for proposals and for evidence to justify them, and on the whole I think the decision was a good one. It means a real effort must be made to get the facts on which a proposal is based into the record, where they can be scrutinized by those affected. It also provides a safeguard against unjustified action, because the body that proposes must persuade an independent body before a regulation can be adopted. Another important safeguard is that Board members are not chosen to speak for specific interest groups. This means that each issue is considered on its merits and not in terms primarily of its impact upon any particular interest.

The Board has set as its principal task in its first two years the complete re-examination and updating of the regulations. We began with a series of relatively narrow and specific new standards to deal with immediate problem situations; for example: accelerating the date for secondary sewage treatment on the Mississippi River; requiring removal of phosphates from wastes discharged to Lake Michigan; revising the rules for control of air pollution episodes; and providing for strict control of mercury discharged to the water. The episode rules we have not had to rely on so far, as we have been spared serious air pollution emergencies by the fortuities of the weather, but the Agency has secured and approved episode action plans from large numbers of potential emission sources and is prepared to put them into force whenever the need arises. The Mississippi regulation should result in as much as nine years' advancement in cleaning up discharges that now are given quite inadequate treatment. The mercury regulation has been quite successful: The single chlor-alkali plant in the State, a mercury user of the type that gave rise to the notorious Lake St. Clair affair, has drastically reduced its discharges; and a number of paint manufacturers have wholly terminated their discharges of contaminated waste water while pressing the search for safe and adequate mercury substitutes. The phosphate regulation, which is of utmost importance in preventing Lake Michigan from becoming another Lake Erie, has resulted in phosphate removal at the largest sewage treatment plant on the Lake in Illinois. Whether the regulation is to be followed at the smaller plants, which are to be abandoned before long, is being litigated in the courts.

Our second wave of rule-making proceedings has been concerned with sweeping overhauls of the air and water regulations. We began this process on our own initiative with a proposed set of effluent standards for a large number of water pollutants not covered by the old regulations. Numerous hearings on the proposal showed the need for accurate information as to what treatment

was available at reasonable cost. By this time the Institute was ready to help us, and gave us an exemplary report that summarized what was known about the available technology. With this summary and a few more hearings we were able to adopt a set of standards that we believe will result in a massive reduction of offensive discharges by the employment of standard, well-established treatment methods that are already in use at well-run plants in Illinois and elsewhere. Among other things the experience with the effluent standards has taught us the critical importance of solid input from the Institute in rule-making proceedings.

Our second effort at comprehensive rule-making was an updating of the diverse regulations known as water quality standards. In the course of the hearings on this proposal substantial questions have been raised by the Institute and by others as to the basis for certain of the old regulations we inherited from the Sanitary Water Board. Final hearings on these standards are taking place this week, and we should within about a month have a rather complete set of water pollution regulations. The basic principles of this scheme are two. First, dischargers everywhere should employ a certain base level of treatment indicated by the effluent standards, that will suffice to prevent pollution and leave room for new industry and population in most places. Second, in some places the concentration of sources will be such that additional control measures are necessary in order to achieve acceptable conditions in the receiving waters, as prescribed by the water quality standards.

The third comprehensive rule-making effort is in a procedural sense our most successful to date, because for the first time we were able to sit back and listen as someone else made proposals and presented evidence to support them. This is the program for implementation of the federal air quality standards, which entails a thorough rewriting of the existing emission standards for particulate matter, together with brand-new standards for the first time limiting emissions of sulfur dioxide, carbon monoxide, nitrogen oxides, and organic materials. The Agency has hired a truly first-rate chief for its air pollution division, John Roberts, who with Institute funding undertook to prepare a proposed regulation and to make a case for its adoption. A great deal of additional information came out of testimony at the hearings, and we will very soon have a good strong set of air pollution regulations that are soundly based on evidence as to how they can be met without unreasonable expense.

This pattern of Institute-funded studies resulting in proposals made to the Board and proved by outside experts characterizes what I think of as our third group of rule-making proceedings. We have already received from the Institute a proposed regulation on nonreturnable bottles and cans, which is presently held up by an injunction. We are expecting in the next few weeks comprehensive proposals on landfills, on radiation from nuclear power plants, and on noise. We have also been considering proposals of our own relating to agricultural water pollution and to mine wastes. I think we will act on all these by summer and that then we will have a more or less complete set of regulations covering all areas of our jurisdiction.

The adoption of regulations, no matter how appropriate, is not in itself a guarantee that pollution problems will be corrected. Vigorous enforcement is the key to that. There are some good citizens who obey a law because it is on the books; there are others who have to be dragged into compliance kicking and screaming.

Enforcement is accomplished in part through the filing of complaints by the Agency, or by an individual citizen--for the Act allows any citizen to file a complaint against anyone allegedly polluting. When a complaint is filed, we hold a hearing and decide whether or not there has been a violation. If there has been, we make whatever order is appropriate to bring an end to the pollution as rapidly as practicable, and to deter future violations. These orders typically set a schedule for compliance and often include money penalties as well. The provision for citizen complaints has served a very useful purpose. Several of our most important cases have been based on citizen complaints, which often have the salutary effect of precipitating the Agency's participation.

A good deal of enforcement has also been accomplished through variance cases. This may seem odd, since a variance is permission to do what the law otherwise forbids. But the great bulk of variance cases are requests for approval of control programs, and the net result in a variance case is often the same as if a complaint had been filed: A timetable is set for compliance, and in cases of unjustified delay a penalty must be paid as a condition of the variance. For we have a difficult problem with a number of cases in which there has been unreasonable delay. Delay must be made unprofitable. But an immediate shutdown would often have such adverse effects upon innocent people such as employees and customers that it is better to allow continued operation during correction of the problem. Our answer in most such cases, absent an absolutely intolerable pollution situation, has been to allow operation while working at all reasonable speed to cure the problem, and to impose a money penalty.

When we have taken more severe action, as by denying a variance of this type or by ordering an immediate shutdown, it has generally been because of the absence of any acceptable control program. We have had rather good results with this practice. In at least three cases that come readily to mind we were confronted with people who not only had missed their compliance deadlines for no acceptable reason but who still refused to commit themselves to any meaningful plan of control. In each case our order, which either directed a shutdown or exposed the company to the risk of shutdown, enabled the company to overcome previously insuperable difficulties and to present almost at once a truly exemplary program.

In general we have had much more success in achieving compliance by industry than by local governments. Our biggest single problem of enforcement so far has been municipal sewage treatment. Director Blaser of the Agency announced not long ago that 82% of the municipal plants in the State will not meet their 1972 deadlines for further sewage treatment. Municipal sewage is probably our most serious overall water pollution problem, and we seem to be facing a massive breakdown of enforcement. We have not had much success so far in getting the local governments to meet their obligations. One reason may be the inherent inertia and frustrations of government, including limitations on taxing and bonding and geographical powers and the like. Another is the unavailability of the ultimate sanction of shutdown. An industry knows that if it does not comply it risks being put out of business. But shutting down the sewage treatment plants would certainly not improve the pollution situation. We have also been somewhat lenient so far in assessing money penalties against municipalities, on the ground that limited funds should be spent on pollution control instead. But this leaves us with less than a full arsenal of tools with which to obtain compliance from a reluctant local government. Civil disobedience cannot effectively be fought with polite requests.

Mr. Blaser has put his finger upon a principal reason for municipal foot-dragging, and that is the absence of promised federal money. The federal government for several years has been authorizing sums of money to help pay the cost of municipal sewage treatment and has annually welshed on its promises. We have repeatedly held that the cities and sanitary districts have a duty to treat their sewage and that the unavailability of federal money is no excuse for delay. But it is not surprising that local officials are in no hurry to obey.

I am very much in favor of federal aid for sewage treatment. Among other things it gets over such hurdles as local debt and tax limitations. But I am afraid Mr. Blaser was right when he said the present federal aid program has delayed a solution to the pollution problem.

And what is to be done about it? Certainly it is time for the federal government to appropriate substantial sums and start paying its debts. Perhaps it is time for large money penalties, possibly compounding daily until the job is done. Perhaps it is time for penalties against individuals in local governments who are responsible for the delay. Perhaps it is time to consider a more drastic remedy, such as is used in some cities against landlords who refuse to make repairs required by the housing code: Perhaps the State should be authorized to build the treatment plants and then charge the local governments for them. For until something is done to change the approach of many municipal officials toward their legal obligations in this area, we are going to have filthy water.

There is one additional remedy that we have found quite useful in promoting at least interim solutions to the municipal treatment problem. That is the highly controversial device of forbidding new connections to sewers serving overloaded or otherwise inadequate treatment facilities. The sewer connection ban not only prevents the situation from becoming worse before it gets better, but it also puts considerable pressure on local officials, from within their own community, to get on the ball and do whatever is necessary to make additional connections possible. When local officials really try their best to find ways of improving their treatment in a hurry, we have found that they come up with pretty successful programs.

We have tried in all our proceedings to convey the idea that we mean business about pollution control; that we will listen to whatever anyone has to say; that we are willing to modify our proposals on the basis of evidence in the record; that we will allow a reasonable time for people of good faith to bring themselves into compliance with new requirements; and that we will not countenance unjustified delay. I believe that pollution is a serious problem; that we have allowed the environment to deteriorate far more than was at all desirable or necessary; that significant improvements in the air and the

water can be achieved by the employment of standard technologies at reasonable costs; and that pollution control cannot be considered in a vacuum without reflecting upon the effects of control measures upon other important goals of our society. There is a need for continued scientific research into abstract or future pollution issues that are as yet poorly understood, but that is not the immediate task of this Board. Our first job is to see to it that the many things we do know how to do at reasonable cost get done as quickly as is practicable in order to reduce some of the gross pollution problems we suffer today.

A final word about the institutional framework created by the Environmental Protection Act. I do think the present setup gets us away from a number of the specific difficulties of the earlier law. I do think it is without its own problems After we have experimented with the present system I hope we can devise a better one. But no institutional system is people-proof. At least as important as a good system is to assure that it does not become a refuge for political hacks, or a captive of special interest groups, or a complacent nest of incompetents. Too many well-intentioned administrative programs have declined to impotence or worse over the course of the years. Nothing short of continued public pressure can keep this from happening to an administrative program. People often want to know what they as individuals can do to fight pollution. I think the most important thing is to keep up the pressure on government to provide a serious pollution control program. It may not have the romance of walking to work or putting bricks in the toilet, but I think it will pay off more in the long run.