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A Digest of

STATE
AIR
POLLUTION
LAWS

1963 EDITION



U.S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

Public Health Service

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U.S. Division of Air Pollution

A DIGEST OF STATE AIR POLLUTION LAWS

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Preface

The enactment of State Air Pollution Legislation represents an attempt by the State legislature to provide the mechanism for attaining the goal of clean air necessary to protect the health and welfare of the State.

The variety of State enactments reflects various approaches to this end as well as differences in views as to the identification of the goal and its relationship to various aspects of the State's economy.

This digest presents in summary form the essential elements of State air pollution control laws to assist in the consideration of State air pollution control legislation, both existing and proposed. It was prepared with the assistance of the Office of the General Counsel, U. S. Department of Health, Education, and Welfare, from an examination of State statutes enacted through the 1963 legislative session.

Also included is an introductory section entitled, "Guiding Principles -- State Air Pollution Legislation." It deals with the essential elements of air pollution control statutes and should help those charged with the responsibility of preparing new or revised legislation in this area.

The introduction is based on a presentation made October 22, 1959 at the 87th Meeting of the American Public Health Association, Atlantic City, New Jersey and later published in the February 1961 issue of the APHA Journal. The authors were Frank Tetzlaff, Samuel Rogers and Sidney Edelman.

STATE AIR POLLUTION CONTROL LEGISLATION

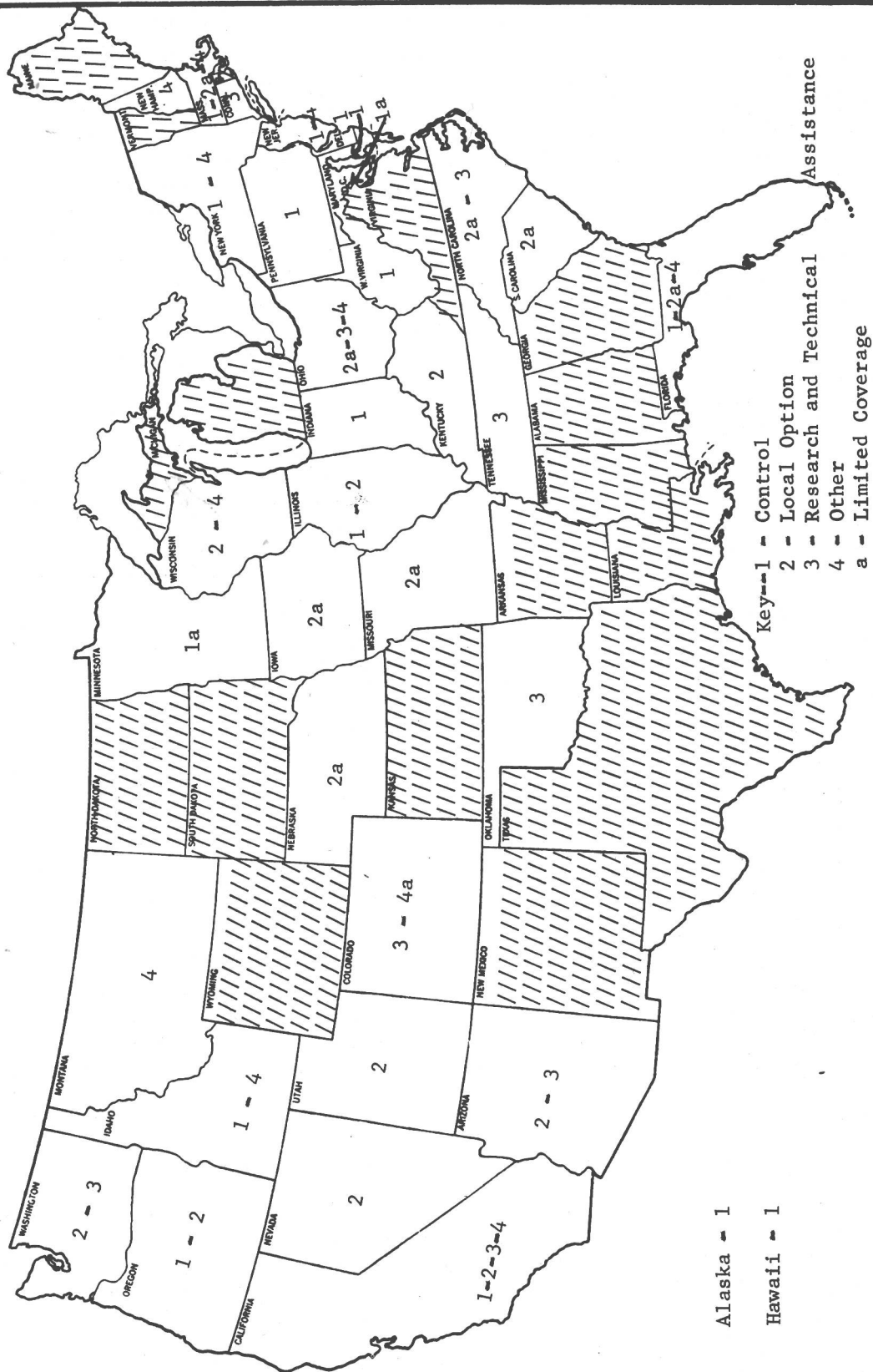
	CONTROL	LOCAL OPTION	RESEARCH & TECHNICAL ASSISTANCE	OTHER ²
1. Alabama				
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3. Arizona		x	x	
4. Arkansas				
5. California	x	x	x	x
6. Colorado			x	x ¹
7. Connecticut			x	
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11. Georgia				
12. Hawaii	x			
13. Idaho	x			x
14. Illinois	x	x		
15. Indiana	x			
16. Iowa		x ¹		
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29. Nevada		x		
30. New Hampshire				x
31. New Jersey	x			x
32. New Mexico				
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34. North Carolina		x ¹	x	
35. North Dakota				
36. Ohio		x ¹	x	x
37. Oklahoma			x	
38. Oregon	x	x		
39. Pennsylvania	x			
40. Rhode Island		x ¹		
41. South Carolina		x ¹		
42. South Dakota				
43. Tennessee			x	
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45. Utah		x		
46. Vermont				
47. Virginia				
48. Washington		x	x	
49. West Virginia	x			
50. Wisconsin		x		x
51. Wyoming				
52. Guam				
53. Puerto Rico				
54. Virgin Islands				

1/ Limited coverage

- v -

2/ Does not include authority to abate nuisances

State Air Pollution Legislation as of August 15, 1963



Introduction

"GUIDING PRINCIPLES -- STATE AIR POLLUTION LEGISLATION"

In recent years, we have seen one after another of our fixed and unquestioned ideas give way to changes attributable to technical and industrial progress. Interplanetary travel and voyages of "Twenty Thousand Leagues Under the Sea" were forecast in fiction. Not many of us really expected these to become actual facts in our time. For a long time we gave little heed to the possibility that the forests and streams of our country were not inexhaustible. We obviously were too optimistic or too shortsighted, and now another of our natural resources is beginning to show signs of excess use. The air supply of our communities has been shown to be limited in its capacity to serve as a receptor for our airborne waste products. We recognize it now as a limited resource and it is now known that abuse of our air supply can have harmful effects on health, comfort and property.

The nuisance aspect of air pollution, the noxious odors, the soiling of clothing and painted surfaces, and the tarnishing of new finishes on automobiles was perhaps the principal motivation for initial control efforts. More urgent and pressing and more obvious public health problems directed our attention to the sanitation of milk, food and water. It was to be expected, however, that an element which is used in such great quantities -- each of us daily uses some 15,000 quarts of air, ten times the weight of the food and water we consume -- could not escape sanitary surveillance indefinitely. Air pollution control efforts, therefore, are now beginning to be based on the premise that no one has the right to use the atmosphere as a receptor of wastes in a manner which will adversely affect the health, comfort or property of others. It is recognized too that economic, social and technical factors are concerned in air pollution control efforts and must be considered in the application of controls and in the appropriate modification of such controls.

Since the end of World War II, the increasing interest in the conservation of our air resource has been reflected to some extent by the development of State legislation. Within the last decade, more than 20 States have modified or adopted new legislation on air pollution, and a total of 28 States now have such legislation. Legislative activity at the local level has also increased during this period, and at the national level, Congress has enacted legislation providing for the Public Health Service program of research and technical assistance in air pollution.¹

It is generally accepted that responsibility for administration of a program for the prevention and abatement of air pollution should be at that level of government capable of dealing with the problem in its entirety. While this may indicate the desirability of air pollution control programs at a local or regional level, due consideration should also be given to the role of the State. It is essential that jurisdictional boundaries be established coincidental with natural geographical and topographical features which may affect air pollution conditions in any local area.

The goal of air pollution legislation should be to maintain a reasonable degree of purity of our air resources consistent with:

- (a) public health and welfare;
- (b) protection of plant and animal life;
- (c) protection of physical property;
- (d) visibility requirements for safe air and ground transportation;
- (e) continued economic development and growth;
- (f) maintenance of an aesthetically acceptable environment.

In programs at all levels of government, control can be most effectively brought about only by legislation which is reasonable and based on technically substantiated criteria, which provides adequate flexibility and yet is reasonably specific in meeting the needs of the area under consideration. It should be adapted to the structure and practices of the government of the State or community. The legislation should clearly establish its scope, specifically assign responsibility and scrupulously avoid technical details, establishing the procedure by which such details are worked out, implemented, and revised to meet changing conditions. In this way a high degree of flexibility can be attained.

State air pollution control activity has developed traditionally from the authority of health departments to preserve public health. On the local governmental level, however, air pollution control authority has been vested in a variety of agencies, including health, building, fire, public safety, and other departments as well as air pollution control departments.

Early State statutes frequently provided an administrative approach which was largely negative in character. That is, when a particular activity was found to cause air pollution, the administrative agency was authorized to take steps to abate such pollution. Newer legislation shows a shift in emphasis from the abatement of existing air pollution to control through prevention.

Sufficient research and painstaking legal drafting effort to meet a common problem undoubtedly would result in statutes having considerable similarity. Some degree of uniformity is justifiable and even desirable. In the field of air pollution, however, perhaps more than in any other problem of the environment, the causes of air pollution and the topographic, meteorologic, economic, social and health factors provide such a wide range of variables that a variety of statutory approaches is inevitable.

A review of existing State air pollution legislation reveals that certain principles appear to be basic for the development of such legislation. While these guiding principles pertain principally to State-level legislation, they may also be applicable, with suitable modification, to local and regional legislation. They may be useful to State, regional, and local authorities in appraising their air pollution statutes and evaluating them in terms of their actual air pollution problems and the present status of technical knowledge. In this connection it is well to recognize the need to facilitate home rule and thereby provide greater

flexibility in meeting local problems. Similarly, the regional approach merits consideration where the use of traditional municipal corporate or county lines creates extraordinary complications when an effort is made to develop an integrated air pollution program for a metropolitan area. These principles may be described as follows without attempting to describe the steps to be taken in the actual preparation of State or local regulations for the control of air pollution since these have been well described elsewhere.²

A. DEFINITIONS

A definition section is an integral part of a comprehensive air pollution statute. This section is important in the administration and interpretation of the statute. Unduly restrictive or vague definitions should be avoided. It is desirable that the definitions be limited to special or new terms or special use of common words. There is no obvious need to include definitions of a large number of scientific terms that are widely used and accepted in scientific circles. The definition of the term "air pollution" is the most important one in a statute and should be broad enough so that control efforts will protect all the air resources of the State. "Air pollution" may be defined as the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration which are or may tend to be injurious to human, plant, or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business. This language makes it unnecessary to show that life or property already has been injured or that their comfortable enjoyment already has been unreasonably disturbed, so long as the pollution situation is generally known to effect those results. The definition encompasses the preventive and abatement aspects. Similarly, the definition of "person" should not be restrictive, but should include the State, any municipality, county, public or private corporation, partnerships, firm or other entity or individual.

B. ADMINISTRATIVE AGENCY

The administrative aspect is probably the key to the entire Act, since it spells out the means by which the Act will be rendered effective. It is in this area that the greatest variations between States and communities might be expected to occur.

(1) In legislation which would authorize a State-wide air pollution control program, it is essential that there be a specific designation of an agency responsible for the administration of the program. The problems of air pollution control concern interests other than health. Consequently, the agency established or designated to administer the program should be so constituted as to take into account the interests and views of all affected groups, in addition to public health considerations.

Some States which have recently enacted air pollution control legislation have entrusted its administration to a board or authority, in the

State health department, representative of the interests considered to be affected. Such boards are sometimes made up of representatives of various departments of the State government, sometimes of citizens from outside the government, and more frequently, a combination of the two. The adoption of this procedure has the advantage of facilitating representation of affected interests in the agency. These bodies, among other activities, may promulgate codes, rules and regulations, which are enforced by the State health department or by the body itself.

It may be considered desirable to vest responsibility for the program in a single administrator, such as the State health officer. If this is done, it would seem advisable to provide representation of affected interests through an advisory council. It is desirable, regardless of the type of administrative agency, that the creation and organization of an advisory council should be included in the legislation. Because the council will have technical advisory responsibilities, it is best that its duties be defined in broad terms in the legislation. More specific description of the duties can be developed in the regulations if deemed necessary.

A procedure should be established for appealing administrative orders or relief from regulations deemed too restrictive. The constitution and authority of the appeal board should be stated and provision should also be made for appeal from any final order or other final determination of the agency to a court of competent jurisdiction.

Where a State air pollution control agency is to be established in an existing department, it is obviously desirable that it be placed in a department having competency in terms of experience, personnel and facilities.

(2) Many of the acts confer on the air pollution control agency concerned the requisite administrative powers to carry out its responsibilities. Thus, the agency is empowered to hold hearings, subpoena witnesses, enforce its subpoenas, administer oaths, examine plans and specifications, require the keeping of records and making of reports, promulgate rules and regulations and enter on property at reasonable times for purposes of inspection and investigations. Procedures of entry and inspection must be described fully. The right of inspection is essential, but inspection procedures should be as reasonable as possible.

C. AIR CLASSIFICATION - AIR QUALITY STANDARDS

Some State air pollution control agencies are authorized to divide the State into areas according to prevailing land use with standards of air quality for the designated areas being set in accordance with such use. Classification of areas and establishment of standards are considered by some authorities to be essential elements of any comprehensive program of this type. In other cases the agency may be given broad authority to develop and publish standards for the quality of the air. Such standards are expected to reflect the relationship between the intensity and com-

position of air pollution and its effect on health, including irritation to the senses, and comfort of human beings, as well as damage to plant and animal life and property, and interference with visibility.

The classification of areas and the promulgation of emission limitations have a definite legal effect and their violation is made unlawful; conversely, discharges which comply with such classification standards are not pollution within the meaning of the statute. In view of the number of persons affected by classifications and standards, the statutes usually require that their adoption be preceded by a public hearing open to all residents of the areas affected, and that adequate notice be given. Such statutes also provide that in the classification of areas, and the establishment of standards, the administrative agency would be guided by the principle of constantly seeking to improve the air quality to the maximum extent practicable.

Many of the State air pollution statutes, other than the technical assistance and research type, give the responsible agency the power to promulgate implementing rules and regulations for the prevention and abatement of air pollution. In this connection, the enforcement powers are not usually held in abeyance until such action can be completed. All States have some procedural requirements to be observed in the promulgation of rules and regulations. In a growing number of States, largely due to the influence of the provisions of the Federal administrative Procedure Act, statutes have been adopted establishing certain procedures prior to adoption of regulations by State agencies.³ Occasionally, the statutes may provide exceptions to these procedures in cases of emergency which may involve the public health, safety, or general welfare.

Standards, codes, rules and regulations governing the emission of air pollutants should be based on technically accepted criteria. The setting of these standards requires also that consideration be given to local conditions, such as topography, meteorology, industrial development, degree of urbanization, aesthetics, and land use planning. The establishment of permissible levels of air contaminants should be approached with due consideration to the desires of the area and the economics involved, especially where health effects are not clearly indicated.

D. PERMITS - REGISTRATION

A permit system provides a technique for the control of air pollution under which prior agency approval of plans, specifications and other data for new construction or alterations is required. Approval is given only if the controls to be provided are, in the judgment of the agency, adequate to meet the requirements on the emission of air pollutants.

Such approval does not, of course, necessarily guarantee that the completed installation will be efficiently operated or that it will perform in accordance with its design specifications.

There are some, however, who prefer a procedure which requires registration of all sources of regular or anticipated emissions above some

minimum size. It should be recognized that a permit program does involve an administrative responsibility of considerable magnitude. The proponents of a registration program believe that knowledge of location and nature of sources of air pollution, with opportunity to inspect, will provide as good a foundation for control as a permit program. It is further claimed that the only advantage of permits over registration is that abatement is simpler by withdrawal of the permit than by petitioning a court for an injunction, an advantage which to some is counterbalanced by the administrative burden of equipment approval. The possible combined use of permit and registration systems might, in certain cases, prove desirable.

E. ENFORCEMENT

Statutes now in effect provide a variety of methods for proceeding against any alleged polluter. It is made unlawful to cause any pollution of the air in the area of jurisdiction in terms of the definition of air pollution, or to violate any order issued by the agency, including an order classifying areas of the jurisdiction or establishing limitations on emission of air pollutants. In some cases, air pollution is declared to be a public nuisance and is therefore subject to abatement in accordance with the practice for abatement of nuisances.

In this connection, the concept is being more generally accepted that the police power of the State and properly authorized local government extends to the regulation of air pollution without regard to whether the condition constitutes a common law or statutory nuisance. The validity of a statute or ordinance regulating the emission of pollutants does not depend on whether or not it is in fact a nuisance. Nor does it add to the validity of the legislation to declare that such emission constitutes a public nuisance.

The criteria used to judge the validity of a statute regulating conduct which does not constitute a common law nuisance are those applied to determine the proper exercise of the police power; namely, that the statute is reasonably necessary for the accomplishment of the purpose and for the public welfare, is not unduly oppressive, does not arbitrarily interfere with private property or impose unnecessary restrictions upon its use.

The violation of the provisions of such statute, or order, or a determination by the agency of failure to perform any duty imposed by the statute is declared to be a misdemeanor. The principal method of making an air pollution control program effective through the compulsory process, however, is by administrative action. The control agency is empowered to issue orders against alleged polluters after adequate opportunity for hearing. Such orders, if not appealed through the courts, become final and are enforceable in much the same way as a judgment of a court. The same administrative procedure, a hearing, is employed in the case of revocation, denial, or modification of permits.

Many of the statutes provide that appeals may be taken to the courts from orders of the control agency. Such appeals do not generally involve trial de novo, but are primarily reviews of the legal propriety of the agency's decision. If the prescribed statutory procedure has been fol-

lowed and the determination is supported by substantial evidence, the order of the agency will usually be affirmed by the court. On the other hand, in a trial de novo the court is authorized to exercise its independent judgment on the evidence and to make an independent determination of the reasonableness and legality of action on all issues of law, facts, and mixed questions of law and facts and opinions therein involved.

It should be noted that there is growing support for the view that the test for air pollution as it relates to health should not be limited to conditions which actually or inevitably result in disease or damage, but should include those conditions which create a hazard, danger, or peril to the public health.

F. SEVERABILITY

A severability clause is usually included to provide that if any part of the statute is declared unconstitutional, the other parts shall continue in force and effect.

REFERENCES

1. Federal Air Pollution Research and Technical Assistance Act: Public Law 84-159 (42 U.S.C. 1857), July 14, 1955 and Public Law 86-365, September 22, 1959.
2. Curran, William J. - The Preparation of State and Local Health Regulations. A.J.P.H. 49:314-321, 1959.
3. Federal Administrative Procedure Act. 5 U.S.C. 1001.

CURRENT PRACTICE -- STATE AIR POLLUTION LEGISLATION

Most recently-enacted State statutes have been of three general types or combinations of these types, i.e.:

(A) A law providing for the prevention and abatement of air pollution problems in all areas of the State.

(B) A broad enabling act permitting the establishment of air pollution control districts by local option.

(C) A law providing for a research and technical assistance program.

A. STATE AIR POLLUTION CONTROL LEGISLATION

Limited operational experience indicates that such legislation may:

- (a) Provide the basis for establishing the organization of the air pollution control agency and for the recruitment of personnel.
- (b) Authorize the utilization of personnel and facilities of other State agencies and reimbursement therefor.
- (c) Provide the basis on which the agency can plan a comprehensive program taking into account the varying conditions of different areas of the State.
- (d) Provide the agency with the authority for the promulgation of rules and regulations based upon needs as determined on the basis of appropriate surveys and hearings before such promulgation.
- (e) Provide for the solution of local or regional air pollution problems by authorizing the formation of local and regional air pollution control organizations.
- (f) Provide that nothing in the legislation should impair or abridge the power of any local or regional air pollution control agency to promulgate rules and regulations whether they be the same or more stringent than those promulgated by the State agency.
- (g) Authorize the State agency to take action in the absence of, or failure of, a local or regional control agency having jurisdiction to control air pollution, and to resolve interjurisdictional disputes.
- (h) Authorize the agency to establish appeal or hearing procedures for cases resulting from direct action of the agency.
- (i) Authorize the agency to conduct a research program on air pollution and conduct field studies and investigations related to air pollution as it may deem necessary.

- (j) Authorize the agency to collect and disseminate information relating to air pollution and its prevention and control.
- (k) Authorize the agency to provide technical assistance and cooperation to local control programs, industry, and other affected groups.
- (l) Authorize the agency to receive or initiate complaints and to take the necessary action, after a public hearing, for the abatement of air pollution and establish a penalty for failure to comply with orders of the agency.
- (m) Make clear that all causes and effects of air pollution are included within the area of responsibility of the State agency. In addition to health effects, these would include the effects on plant and animal life, on structural material and surfaces, and on visibility particularly as it affects air and surface transportation.
- (n) Authorize the agency to cooperate with appropriate agencies of the United States or other States or any interstate agency or international agency with respect to the control of air pollution.
- (o) Authorize the agency to serve as the agency of the State for the acceptance and financial administration of monies from the Federal government or other public or private agencies.

B. LOCAL OPTION LEGISLATION

The effectiveness of local option type legislation is enhanced when the State agency is authorized to take the necessary steps to resolve interjurisdictional air pollution problems. In addition, authority should be granted to the State to deal with those problems beyond the jurisdictional limits of a community. Another provision which has proven useful is the authorization for political subdivisions within the State to enter into agreements or contracts with each other to carry out such functions which might better be performed by them in concert. Interlocal agreement may also be considered for use by communities whether or not they are located within a single State.

Legislation of this type may:

- (a) Provide the procedure by which, and conditions under which, a district may be activated and organized involving one or more cities or counties and the formation of metropolitan authorities.
- (b) Provide for the names and the general and specific powers of the district.
- (c) Provide for an air pollution control board and hearing board for each district and the duties of such boards.

- (d) Provide for the appointment, powers and duties of officers and employees of the district.
- (e) Authorize appropriations to the districts by counties and cities comprising such district.
- (f) Provide for standards for the control or prohibition of obvious pollution and prohibit pollution which may be either actually or potentially harmful to persons or property. During an emergency, such as may develop under adverse meteorological conditions, short-time curtailment of community and industrial activities which contribute to pollution may be necessary. Although such an emergency condition is seldom encountered, it is essential that duly-constituted governmental authority anticipate such a problem, and be prepared to act through a prearranged procedure.
- (g) Provide for injunctive relief against certain violations, and for criminal and civil penalties.
- (h) Provide for appeals to appropriate courts on the basis of existing statutes.

C. RESEARCH AND TECHNICAL ASSISTANCE LEGISLATION

Legislation of this type usually provides the following:

- (a) Authority for the conduct of studies to determine the effects of air pollution upon human, animal and plant life, and upon materials and related matters.
- (b) Authority to maintain a laboratory to provide services necessary for the abatement and control of air pollution.
- (c) Authority to conduct such research as may be necessary.
- (d) Authority to determine by means of study those factors responsible for air pollution.
- (e) Authority to develop and maintain a system of monitoring the atmosphere for purposes of determining the presence and quantity of air pollutants.
- (f) Authority to assist local and regional agencies by means of co-operative activities and consultation.
- (g) Authority to collect and disseminate information relating to air pollution and for the prevention, control, and abatement thereof.
- (h) Authority to accept and administer grants from the Federal government and other sources, public or private, for carrying out any of the functions indicated above.

Air pollution legislation must have a generally accepted reason for being. The rules of conduct established by the authority, legislation

or custom of a State or community are the basis of our laws. An essential condition for their being laws in fact, however, is that they are enforced. Unless laws are to be enforced, they should not be enacted. No two States or communities are alike in the extent to which air pollution may constitute a problem of the environment requiring control. If air pollution legislation is required, it should be made to fit the problem and to fit the objectives of the State or local authorities and the people they serve. Any effective law results in disadvantages to some individuals. These disadvantages should be foreseen and weighed against expected benefits and suitable and acceptable compromises made in the air pollution legislation which is adopted. Enforcement then should prove to be more readily feasible and result in control of air pollution to the extent necessary to maintain the fitness of the air environment.