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Government Action for Clean Air in Monroe County*

*By: League of Women, Voters Joint, Bulletin: Olga Berg  
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Bulletin #127(A)  
Air Pollution

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Summary

Monroe County Department of Health has the primary responsibility for enforcing air pollution control laws in the County. The Air Pollution Control Office of the County Department of Health notifies private owners of new laws as they are passed and warns them that they may be in violation of the laws when they go into effect. Polluters are asked, at informal hearings, to agree that they are violators, and to sign agreements to abate the contamination by a given date. This usually involves installation and operation of new equipment, which in some cases takes several years for delivery. If companies do not agree there are prescribed legal steps to enforce compliance, which may be slowed down because each case has to wait its turn to be heard in court.

The County considers smelting and chemical companies, and power producers to have serious pollution problems. Automobiles are a major source of pollution, but there is no local program to check pollution from individual cars. The Federal Clean Air Amendments of 1970 have stringent regulations which automobile manufacturers will have to meet, but inspection of cars will still be needed to make sure that the antipollution devices are operating.

The State supplies technical and legal assistance to the County and is totally responsible for pollution abatement from municipal sources. Plans for new installations must be approved by both County and State before construction begins.

The responsibility for the control of air pollution in Monroe County is shared by the County Health Department and the Regional Office of the State Department of Environmental Conservation. The Health Department program, which was formally started in 1966 and is the larger of the two, is under the direction of a public health engineer.

<sup>1</sup> This Bulletin was written by the Environmental Quality Committee of the League of Women Voters, Olga Berg, Chairman, as part of their study of air in Monroe County. The study was undertaken to help League members to establish a consensus position on the need for air quality control. It could not have been done without the full cooperation of the Air Pollution Control Office of the Monroe County Department of Health who supplied the data, and the New York State Department of Environmental Conservation Regional Office at Avon.

## A. County Organization for Air Pollution Control

In 1971 the director of air pollution control and his staff of ten are operating on a budget of nearly \$165,000. Roughly \$50,000 comes from the County and \$40,000 from the State (the State helps support the County program in addition to running its own). The remaining \$75,000 comes from a federal grant.

Air pollution control by the Health Department is authorized in Article V of the Monroe County Sanitary Code (1), which was adopted by the Monroe County Legislature in December 1968, and compliments Chapter 4 of the Codes, Rules, and Regulations of the State of New York. The State law (2, 3, 4), in its turn, must meet the Federal requirements of the Clean Air Act of 1970 (public law 9-604) (5). The Health Department has the authority to enforce the Sanitary Code and may request the assistance of the county legal department to do so. The county is empowered to act on all local violations except those originating in municipally-owned or operated facilities. Municipal violations are referred to the State Department of Environmental Conservation. The County program has three parts:

1. To study the quality of the air in Monroe County. The study involves both sampling the ambient air (see RCSI - League of Women Voters Bulletin #126) and finding out which pollutants are emitted from each of the industrial installations in the county. The latter is technically difficult and is done jointly with industry and with the State. The data are supplied by the industries. When the program was started, cooperation was voluntary and the information was privileged. However, the Federal Clean Air Act of 1970 has made compliance mandatory, and the County may do sampling if necessary.

2. To make sure that all installations are in accordance with the law. New regulations are announced some months before they go into effect. The County tries to identify companies that may violate the new rule and notify them in advance. In 1970 about 50 companies were so notified. Methods of obtaining compliance and enforcement are described in Section D.

Polluters are often found in response to complaints. Every complaint is investigated with the following exceptions:

- a. Those which are already known and have recently been checked out.
- b. Single offenses, such as leaf burning, where it is not possible for the Health Department to investigate while the offense is occurring. Leaf burning is, however, a violation of the County Code. The Monroe County Sheriff or local police will investigate and report back to the Health Department if called.
- c. Pollution from vehicles. The only exception is Diesel engines (not marine) which are prohibited by the Public Health Law from producing heavy smoke for more than 5 seconds. The County requires such engines to be tuned properly.
- d. Complaints involving municipally owned and operated facilities. These are checked out and then passed on to the State.

When a complaint is received, an inspector is sent out to investigate. The complainant must identify himself, but his name is kept confidential. If the installation in question is emitting an illegal amount of particulate or gaseous matter the department takes appropriate action (Section D).

3. To educate. The Department tries to keep the public informed about its operation and through the news media publicizes information about new laws, violators, and measures taken to enforce the law. The Department also provides brochures relating to Air Pollution.

#### B. New York State Organization for Air Pollution Control in Monroe County

The State's new Department of Environmental Conservation has a regional office in Avon. The Director has a staff of four, responsible for both solid waste disposal and air pollution control in eleven counties. Five of these counties have their own air control programs, the remaining six rely totally on the State. Assistance, mostly legal and technical, is available from Albany.

Services in Monroe County account for an estimated ten to twenty percent of the budget, which totalled approximately \$120,000 in 1970. Most of it was for consulting service and operation of the Continuous Air Monitor, which went into operation in September, 1970. It is the only continuous air monitor in the County.

The office reviews applications which have first been reviewed by the County, for permits to construct new installations, and sends them to Albany, where the permits are issued. Waivers of construction permits, open burning permits and applications for federal grants are also reviewed by the Regional Office before being sent to Albany. The Department reports monthly to Albany on a number of programs (compliance schedules, complaint investigations, diesel enforcement, etc.) The Regional Office takes direct action only when the County does not have the authority to do so. It could, theoretically, also act if the County refused to do so, but this has never happened.

In counties where there is no health department, the Regional Office acts directly to enforce the State's clean air law by locating offenders, working out voluntary compliance plans and holding hearings when necessary. The Regional Office may take legal action, an especially time consuming process because its legal advice and assistance come from Albany, where ten lawyers handle air and water pollution suits for the State.

#### C. Laws Concerning the Release of Pollutants Into the Air

New York State regulations governing permissible emission rates are concerned with both particulate and gaseous matter. New York will have to honor the new Federal Clean Air Act, which requires the State to set emission limits for the major gaseous pollutants.

The County Code states how clean emissions from stationary sources must be, as follows:

Smoke control: As of February, 1967 no new combustion furnace designed to produce heat and power shall be allowed to emit smoke darker than shade No. 1 on a Ringelmann chart. Ringelmann charts, used to estimate the density of smoke, are published by the U. S. Bureau of Mines and illustrate graduated shades of gray.

Small Ringelmann cards are for sale in Scrantom's so any individual citizen can check any stack. According to the Health Department, Rochesterians frequently report smoke of a density permitted by law. Such reports are checked, but no action is taken.

Incinerators: Specific standards are set for particle and smoke emissions for incinerators, based on the age and capacity of the incinerator. Private incinerators, such as those in supermarkets, come under the jurisdiction of the County. The County may also warn a municipality that its incinerators (such as the East Side incinerator) are not complying with the State law, but any action must be taken by the State. As of June 1, 1971 the City of Rochester incinerators were closed.

Special industries: Permissible emission rates are set in tables in pounds per hour. The law takes into account the adverse effects of the contaminants, their dispersion from the source, and the amount of material being processed.

New installations: Any person planning to construct a new installation must obtain written approval from three departments: (1) the County Health Department (2) the State Department of Environmental Conservation and (3) the New York State Department of Labor. The latter has jurisdiction over operations within the plant. The application must give enough data to enable the Director to judge the potential air pollution effects. The Director's approval is subject to review and approval by the New York State Department of Environmental Conservation, Division of Air Resources. Operation of the completed facility requires an operating certificate. Special provision is made in the Code for cases involving trade secrets or urgent need for construction. Some exceptions are allowed under the County Code.

Open fires: With a few minor exceptions, no open fires are permitted for burning of refuse, including yard trimmings. Fires for purely recreational purposes are permitted.

Additional New York State regulations not covered in the County Code are as follows:

Automotive Emissions: New cars must come equipped with exhaust emission control systems. This is mandated by Federal law and tests are conducted at the factory.

Crankcase and exhaust emissions are regulated for old cars registered in New York State. Regulations differ according to the age of the car. Presently it is up to an individual to be sure that his car has the proper equipment and that it is in working order. The law says that as soon as it is "technologically feasible and economically practical" to do so, individual cars are to be inspected for polluting emissions as part of the annual state inspection. Anti-pollution devices do exist, and mandatory inspections to see that they are attached and operating could be initiated now. Today's devices have drawbacks, such as increased gasoline consumption and the need for more precise engine tuning, but if used they do decrease, although they do not completely stop, some air pollution. (Hydrocarbons and carbon monoxide are better controlled than nitrogen oxides.)

Regulation of the use of polluting fuels: The State has regulated the amount of sulfur that may be in fuel purchased for use in the State. Regulations are much stricter for metropolitan New York City than for other areas. The permitted amounts with minor exceptions are:

Entire State after June 1, 1970, not more than 1.65 lbs. sulfur/million BTU

Metropolitan New York after October 1, 1971, not more than 0.20 lbs. sulfur/million BTU

These figures make clear that emission regulations and fuel requirements in contaminated areas are often stricter than in relatively clean areas, even though the ambient air standards in the contaminated regions are less stringent. There is however a shortage of available low-sulfur coal and oil, which may make it difficult to comply with these laws.

After June 1, 1972 coal burning, hand fired furnaces may no longer be built for heat and power.

#### D. Law Enforcement

##### County Law Enforcement

The County Air Pollution Control Office of the County Health Department informs violators that they are not complying with the law. In the case of a simple violation such as open burning, a warning letter may be sent the first time and a fine imposed the second. A typical fine might be \$500.00. Sometimes court action is needed to recover the fine. The maximum civil liability is \$1,000 for the first violation and \$200.00 per day for continued violations. If criminal action is taken against a violator, he is subject to a maximum fine of \$50.00 and/or six months imprisonment. After such action the violator has a criminal record.

In the case of a serious problem, the County Health Department usually asks for an informal hearing to try to work out a satisfactory solution and abatement schedule. After the informal conference and after the company admits to the violations, an order is issued by the Director. The order includes specific dates for implementation and abatement. If the company does not admit to the violations, formal hearings are held, and an order is issued. Implementation plans require an understanding of the latest technology. They are time consuming to prepare because great detail is required. The new Federal Clean Air Act will require the State to set emission limits for major gaseous pollutants, and after a public hearing, the industry's implementation plans will eventually have to take each pollutant into consideration. Monroe County has been using this procedure since 1969. Apparatus used to prevent pollutants from reaching the ambient air is, of course, often expensive and in some cases it takes several years for delivery.

Abatement plans are first reviewed by the County and then sent to the Regional Office of the Department of Environmental Conservation in Avon where they are reviewed a second time and sent on to Albany for a permit to construct. A company is then permitted to operate, as long as it is meeting its pollution abatement schedule. This whole procedure of setting up an abatement plan has been greatly speeded up in recent years. Currently it does not take longer than six months.

In the case of a continued violation, the Director of the County Health Department may issue a Director's order demanding that the violation be stopped. If it is not stopped, he may request the Legal Department of Monroe County to obtain an injunction. This procedure is slow because it involves the courts; it could be improved if the Director were given more direct powers.

Finally, the Director has no power over governmental polluters except in emergencies. In Monroe County, excessive smoke (particulates) comes from certain government-owned incinerators and heating plants, especially the Iola Sanitarium.

State Law Enforcement

The State does not work through informal hearings. It requires a violator to appear at a public hearing. After weighing the evidence the Commissioner of Environmental Conservation (or his board) issues an order. It may be anything from a request for plans to a ban on an activity which violates the Code. The Commissioner's decision is subject to review by the State Supreme Court. If the violator does not comply, the Commissioner can ask the State Attorney General to press for a court injunction. After a preliminary warning, fines may be imposed by the Commissioner. The maximum fine, as of June 1971, is \$2,500 plus \$500 for each additional day of violation. Once again, action involves legal departments and the courts and is, therefore, slow. Polluters can stall for considerable periods of time while continuing practices which cause pollution. The public proceedings, however, bring the pressure of adverse publicity to bear against the polluter.

Literature Cited

- (1) Monroe County Sanitary Code. Article V, Air Pollution Control
- (2) Public Health Law Nos. 1271, 1276, Subchapter A, Chapter 4 of Title 10 (Health), Official Compilation of Codes, Rules and Regulations of the State of New York
- (3) Air Pollution Control Laws of New York State. Air Pollution Control Board, New York State Department of Health
- (4) "Rules to Prevent New Air Pollution in New York State". Air Pollution Control Board, New York State Department of Health
- (5) Federal Public Law 91-604, Clean Air Amendments of 1970

## Glossary

<b>air quality level:</b>	a number between I (cleanest) and IV (most polluted) set by the State to specify the degree of air purity that a given region can be allowed to reach
<b>ambient air:</b>	air that surrounds you, wherever you are
<b>BTU (British Thermal Unit)</b>	a unit of heat defined as the amount of heat required to raise one pound of water one degree Fahrenheit
<b>continuous air monitor:</b>	an instrument designed to draw air continuously, collect the impurities, and measure them at pre-set intervals
<b>criteria:</b>	documents issued by the Federal Government Environmental Protection Agency. Each air pollutant is the subject of a different bulletin which describes its occurrence, properties, fate and effects on vegetation and man. When available, epidemiological studies are described.
<b>dust:</b>	any solid particulate matter
<b>emission standard:</b>	maximum amount of a pollutant that is permitted to be discharged from a single polluting source
<b>fossil fuel:</b>	coal, oil, and natural gas, so called because they are the remains of ancient plant and animal life
<b>micron:</b>	symbol $\mu$ ; a unit of measurement equal to 1/1,000,000 of a meter or .00003937 of an inch
<b>oxidize:</b>	to change a chemical compound to another that has more oxygen or less hydrogen. Oxidized fat is rancid, oxidized iron is rusty
<b>oxidant:</b>	a substance in the air that oxidizes other substances, either by reacting with them or by promoting a reaction with atmospheric oxygen
<b>particulate:</b>	a particle of solid or liquid matter
<b>ppm (parts per million):</b>	a unit of concentration of pollutants in air expressed as ratio of weight of pollutant to the weight of air that contains it multiplied by one million
<b>Ringelmann chart:</b>	a series of charts, numbered from 0 to 5, that simulate various smoke densities, by presenting different percentages of blackness to the eye. A Ringelmann No. 1 is equivalent to 20% black; a Ringelmann No. 5 to 100%. They are used for measuring the opacity of smoke arising from stacks and other sources, by matching smoke to densities on the chart. Ringelmann numbers are sometimes used in setting emission standards
<b>smoke:</b>	solid or liquid particles, generally under 1 micron in size
<b>standard:</b>	a value set by either State or Federal Government. Ambient air standards are based on criteria, and set that maximum amount of a pollutant that should be tolerated in the air