Local Government Action in the Control of Environmental Pollution in the Commonwealth of Pennsylvania

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LOCAL GOVERNMENT ACTION IN THE CONTROL OF ENVIRONMENTAL POLLUTION IN THE COMMONWEALTH OF PENNSYLVANIA

I. INTRODUCTION

When a person hears mention of the words "air pollution" or "water pollution" he usually visualizes the smoke stacks of a local industry, the burning rubbish in the yard next door, or the dust that settles upon everything in the area. Yet, when that same person turns his thoughts to the abatement and control of these nuisances his focus naturally shifts toward federal and state laws which are administered and enforced by a government agency. However, further thought upon the general problem of environmental pollution, which in truth is an amalgamation of small problems, raises the question whether viable solutions must necessarily be related to state and federal action. In point of fact, that course of action is neither exclusive nor, in many cases, the most effective approach to pollution control.

The purpose of this Comment is to demonstrate that remedial action on the local government level — cities, boroughs, and townships of the Commonwealth — is not only feasible but practical and effective. This will be done in two steps: the first will consider the legal capacity to act on the municipal level. The second will present and analyze the past and present pollution control efforts initiated by Pennsylvania municipalities. Additionally, this Comment will attempt to demonstrate that every unit of local government is capable, if not alone then in coalition with a number of surrounding units of similar composition, of abating and preventing the reappearance of much of the pollution originating in their respective territories. Local pollution control programs can be greatly aided through both federal funding and federal and state programs to train personnel for the field. Furthermore, it will be pointed out that even without this assistance, local activity is neither prohibitively expensive nor overbearingly difficult. This is in large part due to the fact that the Pennsylvania Department of Environmental Resources stands ready to take up the slack where the local program leaves off and to make available its personnel and other resources on request.

1. The term "municipality" is hereby defined as designating any of the following units: County, city, borough, township and municipal authority.


3. There are numerous programs and seminars conducted by state and federal agencies for this purpose. E.g., the National Air Pollution Control Agency conducts a training program in this area; the state of Pennsylvania Department of Justice and Department of Health recently conducted an Environmental Law Enforcement Workshop (Hershey, Pa., Jan. 13-14, 1971).


5. Officials on both the regional and air basin level have stated that they are willing to lend any support they can to local efforts in this area. Interview with Mr.
Before proceeding into those areas of primary interest it would be valuable to note certain related facts. The first among these in order and preeminence is the fact that the Commonwealth of Pennsylvania is a leader among the states in the area of environmental conservation and pollution control. Both the Pennsylvania Air Pollution Control Act and the Pennsylvania Clean Streams Act are model pieces of anti-pollution legislation since their comprehensive coverage and stringent regulations are as superior as any that can be found. Yet, no matter how good the laws on the books are they are only as valuable as the degree to which they can be and are enforced. For the purpose of enforcement of the environmental protection laws, Pennsylvania has been divided into six regions and for the administration of the air pollution act ten special air basins have also been designated. As so often is the case in government, however, the manpower currently available to administer and enforce these laws is well below the level required for optimum results. It therefore becomes apparent that any action by local governmental units to control even simple pollution problems in their respective territories would remove some of the burden upon the state agencies and permit them to concentrate on the more severe problems. It seems equally true that


11. The Regions are composed of contiguous counties and are classified as follows: Region I — Bucks, Chester, Delaware, Montgomery, and Philadelphia; Region II — Berks, Bradford, Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, and Wyoming; Region III — Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry, and York; Region IV — Bedford, Blair, Cambria, Centre, Clinton, Columbia, Fulton, Huntingdon, Juniata, Lycoming, Mifflin, Montour, Northumberland, Snyder, Somerset, and Union; Region V — Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Washington, and Westmoreland; Region VI — Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Potter, Venango, and Warren.

12. The ten air basins are areas of high pollution incidence and are designated as follows: Philadelphia, Allentown–Bethlehem–Easton, Scranton–Wilkes Barre, Reading, Lancaster, Harrisburg, York, Johnstown, Beaver Valley, and Erie.

13. The Chief Air Pollution Control Engineer in Region I, of the State Department of Environmental Resources, noted this point generally in stating that his enforcement staff, numbering five men in addition to himself, is insufficient to enforce the state regulations in the manner required to attain optimum results. Interview with Mr. Frank J. Willard, Jr., in Norristown, Pa., Jan. 6, 1971.

14. It was stated by the Chief Air Pollution Control Engineer of Region I that if the local municipalities were to take care of their own black smoke, dust and odor problems his office would be relieved of about seventy-five percent of the complaints received. If such were the case the staff of the office could devote its time to that small number of problems which are more intricate, thus requiring a high degree of expertise and the use of special equipment for their resolution. The obvious result would be cleaner air and a healthier environment. Interview, note 13 supra.
such a course of action will lead to the resolution of smaller local problems that otherwise would not have been remedied but for the local enforcement.

Since this Comment will deal almost exclusively with air pollution control, brief consideration will be given to the water pollution problem. Initially, it should be noted that the nature of the problem in water pollution and its control differ significantly from that of air pollution. There are only two major water pollutants to be controlled—sewage and industrial wastes. Due to the grave health hazard created by the contamination of water supplies by sewage, the effective control of sewage has long been a prime concern of every municipality. In addition, the Commonwealth has imposed stringent sewage, waste treatment, and disposal requirements upon municipalities and industry. The Pennsylvania Sewage Facilities Act was added to these regulations in 1966. This enactment required every municipality, or organization of the same for the purpose of sewage treatment, to submit to the state Department of Health a comprehensive plan explaining its current sewage disposal program and a projected extension of its sanitary sewer system. Every plan submitted must “provide for adequate sewage treatment facilities which will prevent the discharge of untreated or inadequately treated sewage or any other waste into any waters.” Thus, between the Clean Streams Act and the Sewage Facilities Act, the local political units are commanded to prevent water pollution and are empowered to act toward that end. While the costs of constructing and operating sewage and waste treatment facilities complying with state requirements is high, the Commonwealth has acted to alleviate the financial burden. Furthermore, it is generally recognized that additional savings can be realized through the formation of a regional municipal authority to provide waste treatment facilities for a number of contiguous municipalities. Such multi-

15. Used in this context the word “sewage” is defined as “any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.” Pa. Stat. tit. 35, § 691.1 (Supp. 1971).

16. Used in this context the term “industrial waste” is defined as “any liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from any manufacturing or industry, or from any establishment....” Pa. Stat. tit. 35, § 691.1 (Supp. 1971).


20. Id. § 750.5. Section 750.5 provides that the state will share the cost of preparing such plans.

21. Id. § 750.5(d) (2).

22. To assist the municipalities in these costly undertakings the Commonwealth has enacted legislation entitled “Payment Toward Cost of Sewage Treatment Plants” which provides for payments by the state to any municipality for site acquisition and construction costs for its sewage treatment facilities at the rate of two percent per annum of those costs, provided certain conditions are met. Pa. Stat. tit. 35, § 701 (Supp. 1971).
municipal facilities can bring about economies of scale that no individual community could hope to attain. 23

Unlike the problem of water pollution control, however, there has been no state mandate to compel local governments to control air contamination within their respective jurisdictions. Thus, any municipal action to this end is self-initiated and independent. This being the case, the logical progression of thought leads to the first of the two basic questions to be considered by this Comment: Whether there is a need for, and the existence (or the nonexistence as the case may be) of, enabling legislation flowing from the state which authorizes local regulation of air pollution activities. This inquiry seems to be a most appropriate and essential preface to any discussion of local government activities.

II. LEGAL CAPACITY OF MUNICIPALITIES TO REGULATE AIR POLLUTION WITHIN THEIR BOUNDARIES

The problems facing Pennsylvania's local governments in this decade are many and varied. Not the least of these is the difficulty of finding an authorization which permits the municipality to act to meet these problems. 24

These words of Genevieve Blatt, former Secretary of Internal Affairs for the Commonwealth, serve well to set the perspective for the subject about to be analyzed.

It is a basic tenet of local government law that a municipality is a creation of the state, has only those powers granted to it by the state, and acquires or possesses no inherent power or right from its existence. This limitation of municipal authority has been formulated into a concise statement that has come to be known as Dillon's Rule which states:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation — not simply convenient, but indispensable. 25

This fundamental principle of municipal law was first recognized in Pennsylvania in 1862 in the case of Phillips v. Allen, 26 where the supreme court stated that "a corporation [public or private] . . . cannot make such a law,

25. 1 J. DILLON, MUNICIPAL CORPORATIONS § 237 (5th ed. 1911).
26. 41 Pa. 481 (1862). The court was reciting a fundamental tenet of English Corporation Law related to the power of municipalities to support its finding that Philadelphia could not act pursuant to a city ordinance without specific authorization from the state.
unless the power be especially given by the act [of Parliament]." 27 It was the later case of Philadelphia v. Fox, 28 however, that provided the theoretical basis for Dillon's Rule in Pennsylvania case law. In Fox, the Pennsylvania Supreme Court clearly delineated the status of local governments as being subordinate to the State. The court stated that:

[A local government] is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government — essentially a revocable agency — having no vested right to any of its powers or franchises — the charter or act of [creation] being in no sense a contract with the state — and therefore fully subject to the control of the legislature. . . . 29

Fox and the subsequent cases following it, 30 in conjunction with Dillon's Rule, seem to clearly negate any notion of inherent local government power. 31 This position is not peculiar to Pennsylvania, but rather is the prevailing rule throughout the nation and has been adopted by the United States Supreme Court. 32 Precisely what this principle means to local governmental units is that any ordinance passed or regulation enforced by them will be struck down as an unconstitutional act unless there exists a grant of authority to so act grounded upon a state statute or provision of the constitution. The various municipal codes 33 outline the powers and duties of each form of local government in the Commonwealth and it is these provisions and the judicial interpretation thereof that determines whether local governments can act in the area of environmental conservation and pollution control.

In Pennsylvania statutory provisions expressly granting municipalities the power to abate and control pollution within their respective boundaries are with one exception nonexistent. 34 This absence of an express power grant raises the further inquiry as to whether such action can be taken pursuant to either of the two remaining classes of powers recited in Dillon's Rule: (1) "those [powers] necessarily or fairly implied in or incident to the powers expressly granted" or (2) "those [powers] essential to the accomplishment of the declared objects or purposes of the

27. Id. at 482.
28. 64 Pa. 169 (1870).
29. Id. at 180.
31. DEPARTMENT OF INTERNAL AFFAIRS, supra note 24, at 2.
32. The Supreme Court in Trenton v. New Jersey, 262 U.S. 182, 187 (1923), ruled that local government has no power except that which is given to it by the state.
33. Title 53 of Purdon's Pennsylvania Statutes contains the city, borough and township codes while the county codes are found in title 16.
34. At the present time the only municipal code that includes such a provision is the Second Class County Code which specifically empowers a second class county to enact ordinances for the abatement and control of air pollution. PA. STAT. tit. 16, § 5195 (Supp. 1971).
The answer to this question will of course emanate from the judiciary for it is within the province of the courts to interpret statutes and determine what powers are granted thereby. It is therefore necessary to consider the extent to which the courts have found “implied” and “essential” powers to exist.

The Pennsylvania courts have not hesitated to apply the historic and authoritative language of *Philadelphia v. Fox,* in combination with *Dillon's Rule* to substantiate their decision that municipal action was without authority. In *Commonwealth ex rel. Woods v. Walker,* the Pennsylvania Supreme Court followed this pattern in stating that when the General Assembly finds that a certain road is a state highway the county must act in accord with that finding since it is without power to dispute it. This is only one of the many cases in which the courts have relied upon *Dillon's Rule* and *Fox* to substantiate their ruling.

However, it seems “wrong to suppose that the only policy which is enforced by the courts [in regard to local governmental action] is that of the abject subservience of local government to the General Assembly.” A review of several Pennsylvania decisions makes it apparent that a major concern of the courts is the actual effect of their decisions and not solely adherence to a theory of municipal servitude to the state. One such case is *Mundis v. Southeastern Joint School District,* which concerned the condemnation of certain property by a joint school district. The basis for the challenge of the condemnation was that an express grant of power to condemn is required by law before an agency can so act and that the joint school district was not so empowered. In deciding for the school district, the court insisted that since the power to so act was expressly granted to separate school districts by the school code, similar power must be “implied” as running to a joint district. The court in so ruling noted the undesirable repercussions that would flow from a contrary finding.

This same concern was exhibited in the case of *Purcell v. Altoona,* which involved the 1933 Civil Service Act that specifically repealed all other acts or parts thereof inconsistent with it and was to establish a “complete and exclusive [employment] system.” The supreme court upheld a city ordinance which called for action inconsistent with and not authorized by the Act. The court stated that since the 1933 Act was silent on the subject of such action it could not be said to have repealed an earlier act which authorized the hiring of firemen, because of the emergency caused by World War II, in a fashion prohibited by the 1933

36. 64 Pa. at 180.
37. 305 Pa. 31, 156 A. 340 (1931).
38. *See, e.g., cases cited in note 30 supra.*
41. It is important to note that the court reached this decision even though in so finding they contravened the rule that no power to condemn exists unless it is expressly granted. 72 Pa. D. & C. at 620-23.
42. 364 Pa. 396, 72 A.2d 92 (1950).
Act. The court was clearly looking to the rule of reason and in light thereof found the challenged action to be within the scope of Dillon's Rule. It is submitted that these examples serve to show that the existence of Dillon's Rule and the cases following it do not preclude a finding contrary to the theory which they embody, i.e., absent an express grant of power, there is a presumption against a municipality's claim of authority to exercise the power. Moreover, the question whether any particular local government action will be upheld as properly authorized in the absence of an express grant of power will depend in large measure upon the nature of the activity involved.

It goes without saying that in this decade one of the principle objectives of both the federal and state governments will be the control of environmental pollution. It should also be apparent by this time that local governmental action involving a substantive policy which the court deems worthy of continuation will be found to have its source of power "implied in" or "essential to" some express grant of authority to that municipality. Assuming the Pennsylvania courts would favorably view a local government's substantive policy directed toward pollution control, the next level of inquiry should focus upon the municipal codes in search for grants of express authority from which the courts could imply municipal authority to effectuate this policy.

The municipal codes grant cities,44 boroughs,45 and townships48 the general power to make expedient or necessary ordinances, by-laws, rules, and regulations, beyond the special powers granted to them, for the proper management and control of the municipality and for the health and general welfare of its people. While the precise wording of these grants differs somewhat, they all contain a "general welfare" clause expressly authorizing municipal activity to insure the well being of the community. Moreover, it is a generally acknowledged fact that air and water pollution are derogatory to the "general welfare" of a community. It would therefore seem to be all but indisputable that local government authority to act to control pollution is "necessarily or fairly implied in or incident to the power expressly granted [general welfare clause]"47 and "essential to the declared objects and purposes of the corporation [general welfare clause]. . . ."48 Furthermore, the words of the Pennsylvania Supreme Court in the case of Warren v. Geer,49 would appear to indicate that such power would be recognized:

[The general welfare] power is very broad indeed and practically includes whatever conduces to the benefit and advantage of the borough

47. See pp. 899-900 supra.
48. Id.
49. 117 Pa. 207, 11 A. 415 (1887).
(municipality), and would seem to restrict the limitations upon its
exercise to those which require ordinances to be reasonable, and not
in conflict with the state or federal constitutions.50

In accordance with Warren, the courts of Pennsylvania have consistently
interpreted the "general welfare" clause in a very liberal fashion, finding
it to authorize "whatever conduces to the benefit and advantage of the
(municipality)."51

While the cities, boroughs and townships of the Commonwealth appar-
tently possess sufficient authority to regulate pollution control, the counties,
with the previously noted exception of second class counties,52 are not so
empowered.53 Although this absence of county power could prove to be
troublesome, it does not seem fatal since it can be circumvented by other
means.54 Thus, it may be concluded that the municipalities of the Com-
monwealth, pursuant to the "general welfare" clause of the municipal
codes, have the derived power to enact and enforce anti-pollution measures.

Another source of municipal power to enact anti-pollution measures
is the "Home Rule" provisions of the Pennsylvania Constitution. In 1968,
the Constitution of the Commonwealth was amended to include article IX,
section 2, which authorizes any municipality within the state to, in effect,
become a self-governing body with expanded powers through the adoption
of a home rule charter.55 The adoption of a home rule charter pursuant
to the constitution frees the municipality from the confines of the relevant
municipal code and extends to it the express grant to "exercise any power
or perform any function not denied by . . . [the state] Constitution, by its
home rule charter or by the General Assembly. . . ."56 Having adopted
a home rule charter, a municipality would have a free hand in combating
environmental pollution in its area.57 However, since home rule is the
exception rather than the rule in Pennsylvania, further discussion on this

50. Id. at 212, 11 A. at 416.
51. See, e.g., Adams v. New Kensington, 357 Pa. 557, 55 A.2d 392 (1947);
Commonwealth v. Pittsburgh, 183 Pa. 202, 38 A. 628 (1897); Coopersburg v. Cliff,
16 Pa. D. & C2d 576 (Lehigh County C.P. 1958); Whitehall v. Oswald, 50 Mun. L.
Rep'r 270 (Monroe County Pa. C.P. 1958); McKeesport v. Salis, 41 Mun. L. Rep'r 178
(Monroe County Pa. C.P. 1949).
52. See note 34 supra.
53. The County Code which regulates the actions of 3rd through 8th class counties
does not contain an express grant of power to so act or any express grant of power
from which such a power could reasonably be implied. See Pa. Stat. tit. 16, §§
101-3100 (1956).
54. For a discussion of the manner in which a county-wide organization can be
formed to combat pollution, see pp. 903-06 infra.
55. Pa. Const. art. IX, § 2 (1969), provides:
Municipalities shall have the right and power to frame and adopt home rule
charters. Adoption, amendment to or repeal of a home rule charter shall be by
referendum, . . . A municipality which has a home rule charter may exercise any
power or perform any function not denied by this Constitution, by its home rule
charter or by the General Assembly at any time.
56. Id.
57. The only limitations on a municipality's powers are those found in the Con-
stitution, enactments of the General Assembly and the charter itself. To date there
are no restrictions in either of the first two of these areas to curb local action in
pollution control.
point seems unwarranted. Therefore, the focus of attention will return to local governmental action initiated pursuant to the authority granted by the municipal codes.

III. CURRENT MUNICIPAL ACTIVITY IN THE ABATEMENT AND CONTROL OF AIR POLLUTION

Perhaps the most significant statement that can be made as a precursor to this section is that the materials which follow will attempt, not so much to show what has been done, but rather what can be done and how. It is most unfortunate that, with the exception of open burning ordinances, only a small number of municipalities have enacted pollution control regulations. Yet, those political units that have undertaken the task serve well to show how valuable and effective such local governmental action can be in the fight to clean up the environment. Within this section the codes and regulations of these municipalities will be examined by political unit, beginning with the county and proceeding in order of declining size to cities, boroughs and townships. The format for this analysis will be: (1) to look at the creation of the regulation; (2) to examine their procedures for administration and provisions for enforcement; and (3) to review their effectiveness. The precise regulations and standards that are imposed under the codes will not be treated, except in passing, due to the fact that they are lengthy and technical in nature, and their consideration would seem to lend little value to this analysis.

A. Counties

With the exception of counties of the second class, there is no authority at this level of government for action in the area of pollution control. Allegheny County, the only second class county in the state, has enacted comprehensive legislation to abate and control the contamination of the environment within its jurisdiction. On December 4, 1969, the Board of County Commissioners passed an ordinance that became article XVII, “Air Pollution Control,” Rules and Regulations, Allegheny County Health Department. This ordinance represents one of the most

58. While it has not been determined exactly how many municipalities prohibit or control open burning it can be stated that the number is sizable and growing rapidly.

59. Due to the extensive length of these ordinances and the limited nature of their worth only portions of the ordinances will be considered.

60. See p. 899 and note 34 supra.

61. While the County of Philadelphia is also covered by a local regulation, that code was created by the City of Philadelphia. See note 90 and accompanying text infra. By constitutional amendment the affairs of the County of Philadelphia were turned over to the City government and for all intents and purposes Philadelphia is no longer considered in county considerations. Pa. Const. art. 9, § 13.


63. This Ordinance repealed Article XIII — “Smoke and Air Pollution Control” — of the Allegheny Health Dep't Rules and Regulations and became effective Jan. 1, 1970.
comprehensive and stringent anti-pollution codes in force. Section 1701, "Purpose," states as follows:

This Ordinance . . . provides definitions; provides for the administration and enforcement of these regulations; provides standards; establishes an Air Pollution Control Advisory Committee; establishes a Board of Air Pollution Appeals and Variance Review; provides for permits, fees, and standards for the installation, construction, addition to, alteration, and use of fuel and refuse burning installations, processes, equipment and devices; provides standards and fees regulating and requiring the installation of smoke abatement, dust arresting, and other air pollution control equipment and monitors; regulates the sale, use, and consumption of certain solid fuels; provides for the inspection of all equipment, devices, plants and processes required by this Ordinance; provides for variances, hearings, fines, and penalties for violations of this Ordinance. 64

In the organizational design for the administration of the Allegheny Ordinance the two key bodies 65 are the Board of County Commissioners, which makes all appointments to the various boards provided for by the act, and the County Board of Health, which formulates the rules and regulations governing air pollution control. 66 The primary responsibility for the enforcement of the Allegheny Ordinance rests upon the director of the County Health Department under whose auspices the Bureau of Air Pollution Control administers and enforces the rules and regulations. 67 Falling within the rules and regulations, all of which are part of the Ordinance, are: Visual air contaminants, 68 particulate matter, 69 sulfur compounds, 70 miscellaneous air contaminants, 71 incinerators, 72 control of odor from processing animal matter, 73 transportation, 74 open fires, 75 and nuisances. 76 In each of these areas specific standards, operating procedures, or emission limits are set out in the Allegheny Ordinance.

64. Allegheny County, Pa., Ordinance to Regulate the Control of Air Pollution within the County of Allegheny, Dec. 4, 1969 [hereinafter referred to as Allegheny Ordinance].
65. The Allegheny Ordinance also provides for an Air Pollution Control Advisory Committee and a Board of Air Pollution Appeals and Variance Review with precise procedural provisions for each to follow. Id. § 1703.1.
66. Id.
67. Id. § 1705. "Air contaminant" is defined in the act as:
Any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic waste, particulate, solid, liquid or gaseous matter, or any other materials in the open air. . . .
Id. § 1702.3.
68. Id. § 1706. "Particulate matter" is defined in the Allegheny Ordinance as:
Material, other than uncombined water, which exists in a finely divided form as a liquid or solid at standard conditions.
Id. § 1702.46.
69. Id. § 1707.
70. Id. § 1708.
71. Id. § 1709.
72. Id. § 1710.
73. Id. § 1711.
74. Id. § 1712.
75. Id. § 1713.
Under section 1715, "Compliance Testing," if the Bureau of Air Pollution Control [hereinafter the Bureau] has reasonable cause to suspect a violation exists, the Bureau Chief⁷⁷ may "conduct such tests or may order the owner or lessee . . . to conduct and complete within a specified period of time such tests as he deems necessary or desirable to determine whether the equipment or process is in violation . . ."⁷⁸ These tests must be conducted in the fashion directed by the Allegheny Ordinance by people whose competence and professional ability must satisfy the Bureau Chief. The final results must be forwarded to the Bureau within ten days of test completion.⁷⁹ A crucial provision of the Allegheny Ordinance is section 1718, "Permits and Fees," which requires the acquisition of an installation permit for: (1) all types of fuel burning and combustion equipment or process equipment except domestic installations; (2) the sale, delivery or distribution of solid fuel; and (3) open burning. These permits are issued only if the installation or operation complies with the Allegheny Ordinance. The Bureau is also granted an absolute right to information,⁸⁰ to inspect,⁸¹ and to install or order any person to install at his own expense, equipment to monitor emissions.⁸² The Allegheny Ordinance further provides for the seeking of injunctive relief when the Bureau deems it necessary.⁸³

The standard operating procedure under the Allegheny Ordinance is to issue an order, pursuant to section 1722,⁸⁴ "Notice or Order," upon discovery of a violation and to file a criminal complaint only if the notice goes unheeded.⁸⁵ The recipient of such an order has a right to administrative redress and he may contest the findings and/or seek a temporary exemption from the regulations.⁸⁶ For each violation of the Allegheny Ordinance the offender, on conviction at a summary proceeding, may be fined up to $1,000 and/or sentenced up to thirty days in the county jail.⁸⁷

From the foregoing analysis it would appear that the Bureau of Air Pollution Control has all of the tools necessary to resolve the pollution

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⁷⁷. Throughout the course of the discussion of this ordinance "Bureau Chief" will be used where the "Director" is defined as including his "authorized representative" who, in practice, is the Bureau Chief.
⁷⁸. Allegheny Ordinance § 1715.1(A).
⁷⁹. Id. § 1715.1.
⁸⁰. Id. § 1719.
⁸¹. Id. § 1720.
⁸². Id. § 1721.
⁸³. Id. § 1723.
⁸⁴. Id. Under this section the Bureau sends out a notice or order which states the precise violation involved and gives a set period within which to comply with the Ordinance.
⁸⁵. The current Bureau Chief, Mr. Ronald J. Chebloski, noted this practice and stated that voluntary compliance with such notices is the general rule and legal action is seldom necessary. See e.g., note 86 infra. Interview with Mr. Ronald J. Chebloski, Chief of the Bureau of Air Pollution Control, Allegheny County Health Department, in Pittsburgh, Pa., Nov. 12, 1970.
⁸⁶. The right to have a hearing at which to contest the order is granted by section 1722.1(C). At any time, whether or not under a Bureau order, a party may apply for a temporary variance from the regulations pursuant to section 1704.
⁸⁷. Allegheny Ordinance § 1726. It is also noteworthy that each section or subsection violated constitutes a separate offense, as does each day the violation persists. Id.
problem in Allegheny County. Since the Allegheny Ordinance became effective in January, 1970, the Bureau has, up to November, 1970, issued 533 notices of violation, filed 82 criminal complaints, and investigated 4,607 complaints received from the general public.\(^8\) The Chief of the Bureau of Air Pollution Control has expressed overall satisfaction with the Allegheny Ordinance but feels a few small changes would be beneficial.\(^6\)

**B. Cities**

At least three cities in the Commonwealth have enacted anti-pollution measures: Philadelphia, Allentown, and Erie. Since the Philadelphia Air Management Code is the most complex, it will be dealt with first, while the Allentown and Erie enactments will be treated thereafter.

The Air Management Code\(^9\) of Philadelphia was adopted on October 20, 1969, and replaced an earlier ordinance whose provisions were far less comprehensive. It seems clear from section 3-201 “General Provisions” [of prohibited conduct] that the Philadelphia Code encompasses all activities which could or do cause air pollution. This section states that:

(a) No person shall discharge, or allow the escape of air contaminants to the atmosphere:

(1) which are prohibited by or are in excess of those permitted by this Code or by the regulations of the Air Pollution Control Board; or

(2) which exceed the density or opacity limits established by the Board; or

(3) which result in or cause air pollution or an air pollution nuisance.

(b) No person shall perform any acts or operations in violation of orders issued by the Department [of Public Health] pursuant to this Title or the regulations adopted hereunder.\(^1\)

\(^8\) The following table shows a breakdown of both the violations cited and the status of criminal complaints filed. Note that of the 533 violations all but 82 were voluntarily corrected.

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<th>Criminal Complaints Filed</th>
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<td>Postponed</td>
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<td>Warrants Issued</td>
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<td>533</td>
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<td>82</td>
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89. Mr. Chebloski thought that section 1718, “Permit and Fees,” was in need of some amendment to increase the application fees in some instances and to make operating permits mandatory in all cases coming under section 1718.1(A) (1). Interview, note 85 supra.  


91. Two important terms found in this quotation are “Air Contaminant” and “Air Pollution Nuisance.” “Air Contaminant” is defined in the Philadelphia Code as:
In addition to this general provision the Philadelphia Code contains specific prohibitions concerning: open burning, installation and operation of equipment, sealed equipment, habitable structures over highways, automobile facilities, and sale of fuel oil. The specific operating standards and emission limits of the Philadelphia Code are set out in Air Management Regulations I, II, III of the Air Pollution Control Board.

It is the responsibility of the Department of Public Health to administer and enforce the Philadelphia Code. Among the powers granted to the Department in order to perform its duties are the right to inspect, to take samples, and to designate procedures for sampling and analysis. Section 3–301(11) authorizes the Department to order the owner of a facility to conduct, at his expense, all tests necessary to determine whether or not the code and regulations are being complied with. The Department’s single most important grant of power, however, is its ability to issue orders pursuant to section 3–301(3) which states:

The Department shall order all necessary actions, or forebearances, to effect compliance with this Title and regulations adopted hereunder, specify a maximum period of time for . . . [compliance] . . . and through the Law Department initiate appropriate legal action or proceeding . . . to restrain, correct or abate any violation of this Title or the regulation adopted thereunder.

Any smoke, soot, fly ash, dust, cinder, dirt, noxious or obnoxious acids, fumes, oxides, gases, mists, aerosols, vapors, odors, toxic or radioactive substances, waste, particulate, solid, liquid or gaseous matter, or any other materials in the outdoor atmosphere.

Id. § 3–102(3).

"Air Pollution Nuisance" is defined in the Philadelphia Code as:

The emission or discharge of one or more air contaminants to the atmosphere meeting one or more of the following criteria:

(a) In excess of emission standards promulgated by the Air Pollution Control Board;

(b) In such quantity and of such duration that they do or may tend to—

(1) interfere with health, repose or safety,
(2) cause severe annoyance or discomfort,
(3) lessen food or water intake,
(4) produce irritation of the upper respiratory tract,
(5) produce symptoms of nausea,
(6) be offensive or objectionable, or both, to persons because of inherent chemical or physical properties,
(7) be detrimental or harmful to health, comfort, recreation, living conditions, welfare, or safety,
(8) cause injury or damage to real or personal property of any kind,
(9) or interfere with the conduct of industry, commerce, or transportation.

Id. § 3–102(5).

92. Id. §§ 3–202.
93. Id. § 3–203.
94. Id. § 3–204.
95. Id. § 3–205.
96. Id. § 3–206.
97. Id. § 3–207.
98. The Air Pollution Control Board is authorized to draft and enact such regulations under both the Philadelphia Home Rule Charter art. V, § 5–302, and the Air Management Code, Philadelphia Code tit. 3, § 3–302.
100. Id. §§ 3–301(6).
101. Id. §§ 3–301(7).
102. Id. §§ 3–301(8).
One additional section of the Philadelphia Code, which is of particular significance and should be considered separately is section 3-306, "Permits and Licenses," which requires the obtaining of a permit to either install or operate a potential source of pollution.\(^{108}\) The Department of License and Inspection forwards all such permit applications to the Department of Public Health for review and no permit will be granted unless that department approves.\(^{104}\) The approval can be withdrawn at a later date if the grantee is not acting in compliance with the Philadelphia Code\(^{105}\) with revocation of the permit following automatically.\(^{106}\) These provisions can greatly expedite enforcement of the Philadelphia Code since proof of one violation can result in the revocation of the permit which would render all future operation without the permit a per se code violation.\(^{107}\)

Enforcement under the Philadelphia Code, as was the practice in Allegheny County, begins by an order or notice being issued by the Bureau of Air Pollution Control of the Department of Public Health. That order states the specific violation involved and can be contested by any party aggrieved thereby through an administrative appeal to the Health Commissioner.\(^{108}\) If the order is not complied\(^{106}\) with in the time allotted the Department has several alternatives it can employ. Violation of the Philadelphia Code can result in the sealing of equipment, mandatory abatement or compliance, and fine or imprisonment or both.\(^{110}\) The first two convictions are punishable by a fine of up to $300 or imprisonment of up to ninety days or both, with subsequent convictions punishable by fine of not less than $300 or up to ninety days or both.\(^{111}\) From the Code's enactment in October, 1969, through 1970, the Bureau of Air Pollution Control has conducted 12,322 investigations, issuing 1,373 notices of violation, and initiating 295 criminal complaints.\(^{112}\) These statistics readily

\(^{103}\) This provision applies to:

\[\text{[A]ny article, machine, equipment, device, or other contrivance or appurtenances, the use of which may cause the issuance of air contaminants or the use of which may eliminate, reduce or control the issuance of air contaminants} . . .\]

\(^{104}\) Id. § 3-306(1)(a).

\(^{105}\) Id. § 3-303(1)(a)-(c).

\(^{106}\) Id. § 3-301(3).

\(^{107}\) Id. § 3-303(1)(e).

\(^{108}\) Id. § 3-306(1)(a).

\(^{109}\) Id. § 3-305(4).

\(^{110}\) Under the code any violation of an order is deemed a per se violation of the code. Id. § 3-103.

\(^{111}\) Id. § 3-303(5).

\(^{112}\) The following table presents a breakdown of the violations for which orders were issued.

<table>
<thead>
<tr>
<th>Violation</th>
<th>Notices</th>
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<tbody>
<tr>
<td>Smoke</td>
<td>690</td>
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<tr>
<td>Open Burning</td>
<td>251</td>
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<tr>
<td>Odor</td>
<td>152</td>
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<tr>
<td>Dust</td>
<td>75</td>
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<tr>
<td>Fume</td>
<td>65</td>
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<tr>
<td>Fly Ash</td>
<td>56</td>
</tr>
<tr>
<td>Gas</td>
<td>12</td>
</tr>
<tr>
<td>Lint</td>
<td>12</td>
</tr>
</tbody>
</table>

These figures were arrived at through a compilation of the statistics so labeled in the APC Monitor from December, 1969 through November, 1970. Air Management
verify that the City of Philadelphia, as Allegheny County, has not only passed an effective anti-pollution ordinance but is actively enforcing it.

The cities of Allentown and Erie have similarly enacted anti-pollution measures which, though not as comprehensive as those of Allegheny County or Philadelphia, are meaningful steps toward pollution control. The Smoke Abatement Ordinance of the City of Erie, which was enacted on February 27, 1951, is one of the earliest ordinances of its kind in the state. The most concise statement of its coverage is found in the official description of the Ordinance:

An ordinance regulating the emission of smoke, noxious odors or vapors or any other matter from any chimney, smoke stack or any other source . . . ; prohibiting the burning of rubbish or any other combustible materials and operating of outdoor incinerators at certain times . . . ; providing for control of operation of outdoor incinerators and open fires; prohibiting the burning of garbage in bonfires . . . and providing a penalty for the violation of the provisions of this ordinance.114

The Erie Ordinance creates a Bureau of Smoke Abatement to enforce the provisions of the Ordinance,115 which Bureau is under the control of the Director of the Bureau of Public Safety.116 The specific limits and standards to be enforced are established by the Civic Smoke Abatement Board.117 The Bureau of Smoke Abatement is given the authority to enter and inspect in the course of enforcement of the Erie Ordinance.118 The actual enforcement of the provisions is carried out in much the same fashion as in the Philadelphia and Allegheny County programs. Upon discovery of a violation the Chief of the Bureau issues a notice specifying the violation and conferring a reasonable time within which to comply.119 This Ordinance, however, requires a written reply to the notice of violation indicating an intention to comply therewith. If such reply is not forthcoming within ten days of receipt of the notice, or, within the time specified in the notice for compliance, and is permitted to expire without the violator having complied therewith, a second notice is dispatched. This notice directs the recipient to show cause before the Bureau Chief, within ten days, why the penalties of the act should not be applied. Failure to so show cause will result in the Bureau Chief initiating punitive action.120

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113. Erie, Pa., Ordinance Regulating Smoke Abatement, Feb. 27, 1951 [hereinafter referred to as Erie Ordinance].
114. Id. at Preface.
115. Id. art. 2, § 1.
116. Id. art. 2, § 1.
117. Id. art. 3, § 4. This Board is appointed by the Council of the City of Erie and is created under art. 3, § 1 of the Ordinance.
118. Id. art. 2, § 6.
119. Id. art. 4, § 5.
120. This determination by the Bureau Chief can be appealed to the Appeal Board which is established under the ordinance. Such an appeal acts as a stay of the decision, ruling or order in question. Id. art. 5, § 2.
A violation of the Erie Ordinance is punishable by fine of not less than $25 nor more than $300 and each day that the condition persists is a separate violation. 1

The City of Allentown Ordinance 2 was enacted in 1962 and deals with all forms of air pollution and air pollution nuisance. The Preamble describes the scope of the ordinance as including:

[R]egulating the use and operation of fuel burning and refuse burning plants, processes, equipment and devices; approval of plans therefor and for the repair thereof and inspection thereof; authorizing the making of tests and the adoption and promulgation of rules, regulations and standards and for the control and regulation of air pollution and the abatement thereof. . . . 123

The Allentown Ordinance creates an Air Pollution Control Board 124 which has the duty of promulgating and adopting “standards, rules and regulations”125 and hearing all appeals arising under the Ordinance. 126 Full responsibility for the administration and enforcement of the enactment rests with the Air Pollution Inspector. 127 In addition to specific prohibitions concerning a number of designated actions 128 there is a general prohibition making it unlawful to:

[C]ause, emit or allow the emission or escape into the open air from any structure, machine, facility, plant, premises or ground, of smoke, toxic or offensive gases, dust, fumes, mist, odors, vapors, radiations, or any combination thereof, of a quantity or character which constitutes air pollution as defined herein. 129

In enforcing these rules and regulations the Air Pollution Control Inspector [hereinafter Inspector] has the authority to inspect, require (by order) that action be taken to correct violations, and “to commence and prosecute any action, legal or equitable, to punish and prevent violations of this article.” 130 It is also important to note that refusal to comply with an

121. Id. art. 7. Unlike the earlier codes considered there is no provision for imprisonment for a violation, unless, the violator defaults in paying the fine in which case he can be sentenced to a maximum of thirty days in jail.

122. Allentown, Pa., Ordinance 9965, Nov. 7, 1962 [hereinafter referred to as Allentown Ordinance].

123. Id. at Preamble.

124. Id. § 2. The Board is composed of the mayor and members of the city council, or, in lieu thereof, a group appointed by the mayor.

125. Id. § 7.

126. Id. § 9.

127. Id. § 6.

128. Id. § 5(b)–(m).

129. Id. § 5(a). The Allentown Ordinance defines “air pollution” as:

the emission or escape into the air of smoke, toxic or offensive gases, dust, fumes, mist, odors, vapors, radiations, or any combination thereof, of a character and in quantity which is detrimental to the public health, welfare, or safety, or causes severe annoyance or discomfort to the inhabitants of the City of Allentown, because of the inherent chemical or physical properties, or causes, or is likely to cause injury or damage to the real or personal property of any kind, or which interferes with the normal conduct of business.

Id. § 1(a).

130. Id. § 6.
order from the Inspector is a separate violation in addition to the pollu-
tion violation for which the order was issued.81

On detection of a violation an order is issued and if compliance is not
forthcoming the Inspector can file a criminal complaint for violation of a
city ordinance or proceed in equity to obtain a court order. Upon con-
viction for a violation the offender may be fined up to $300.82 From
1967 up to January, 1971, 212 violations have been cited and 45 criminal
complaints were filed.83 In addition, the Inspector during this same
period resolved numerous violations in the course of 1,826 official calls
without having to issue formal orders.84

C. Boroughs and Townships

Due to their small size and limited resources, individual boroughs and
townships are usually incapable of carrying out an anti-pollution program
of any magnitude. A multi-municipality district, however, composed of a
group of contiguous cities, boroughs, or townships, is regarded by many
to be the best approach to the problem of pollution control by small political
subdivisions.85 One air pollution control body serving a number of neigh-
boring political units has many beneficial aspects,86 all of which render
the services to each separate member more effective and considerably less
expensive than if undertaken individually. Such special-purpose districts
are greatly benefited by the Federal Air Quality Act of 196787 since
under its provisions they are able to obtain grants-in-aid from the federal
government for up to seventy-five percent of their annual budget.88 The
degree of "home rule" which such a coalition provides is a condition that
most communities find desirable and which tends to facilitate voluntary
action toward pollution control.89 Moreover, the Pennsylvania Depart-

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131. Id. § 10.
132. Id. § 11. As was the case with the Erie Ordinance there is no provision for
jailing, unless, the violator defaults of payment of the fine in which case he may be
confined for up to ninety days.
133. Letter from Mr. Clifford Bortz, dated Jan. 5, 1971, on file at Villanova
Law Review office.
134. Id.
135. AIR POLLUTION COMMISSION, PENNSYLVANIA DEP’T OF HEALTH, Clean Air,
vol. 7, no. 2 (1968).
136. There are economies of operation that accrue automatically by enlarging the
geographic and demographic base of the operation. Better trained personnel with
more sophisticated equipment can be brought to bear on each problem and the more
complicated pollution problems, incapable of resolution by most individual munici-
palities, can be readily dealt with.
programs qualify for assistance under the act they can receive a grant in an amount
up to 75% of their annual budget for the first three years, 65% for years four to
six, and 50% for succeeding years.
139. It was pointed out that such "home rule" is more likely to obtain voluntary
compliance, the manner in which most progress in the realm of pollution control is
realized, because those involved view it as self-initiated action as opposed to one
being forced upon them by "outsiders." This theory was expressed by both Mr. R.
Emmett Doherty, Lehigh Valley Air Pollution Control District Director, and Mr.
Frank J. Willard, Jr., Chief Air Pollution Control Engineer in Region I, State
Department of Environmental Resources. Interview with Mr. R. Emmett Doherty,
ment of Health favors the establishment of such regional organizations and stands ready to assist them in whatever way possible.\(^{140}\) Despite these advantages, however, there are currently only two such multi-municipality districts in the state — the Air Pollution Control Board of Greater York and the Lehigh Valley Air Pollution Control District.\(^{141}\)

The Lehigh Valley Air Pollution Control District [hereinafter District] is the oldest district and currently composed of twelve contiguous municipalities\(^{142}\) — eight townships and four boroughs — and dates from 1957.\(^{143}\) The District was created by an agreement under which each municipality agreed to pass the necessary ordinances authorizing the creation of such a district.\(^{144}\) The agreement further provided: (1) that each municipality adopt a proper air pollution ordinance;\(^{145}\) (2) how a District Board was to be formed to represent the District;\(^{146}\) (3) how the costs of operation were to be borne;\(^{147}\) and (4) that the individual air pollution ordinances were to be as uniform as possible.\(^{148}\) The key figure in the District is the District Director, who administers and enforces the District's ordinances and is appointed by the District Board.\(^{149}\) Since all of the member municipalities have enacted nearly identical pollution control ordinances, it will suffice to analyze only one of them.\(^{150}\)

The Lower Nazareth Ordinance is representative of the general regulatory scheme employed by each member. It contains specific regulations concerning open burning and dust, smoke, soot, odor, and fume emissions.\(^{151}\) The general statement of prohibited acts makes it unlawful for:

\(^{140}\) This fact was emphasized in a recent Department publication which stated: The Pennsylvania Department of Health, which is empowered by law to encourage and assist in the establishment of such districts, hopes that the experiences and results of these pioneers [the two existing district organizations in the state] will encourage other municipalities to join with contiguous political subdivisions to create similar districts. Clean Air, note 135 supra.

\(^{141}\) The formation of such multi-municipal organizations is expressly authorized by the Constitution of the Commonwealth. Pa. Const. art. IX, § 5 (1969).

\(^{142}\) The municipalities currently comprising the District are: the Townships of Allen, East Allen, Lower Macungie, Lower Mt. Bethel, Lower Nazareth, and Whitehall; the Borough of Emmaus, Nazareth, Northampton, and Stockertown.

\(^{143}\) While multi-municipal activity in this region dates back to 1957, the District was not formed in its present status until 1967. Clean Air, note 135 supra.

\(^{144}\) That agreement reads in pertinent part:

The Municipalities shall establish, by proper ordinances, a district to be known as the "Lehigh Valley Air Pollution Control District," hereinafter referred to as the District, which shall have the responsibility of administering those air pollution ordinances of the various municipalities involved herein.

Agreement to form Lehigh Valley Air Pollution Control District, Jan. 1, 1967, cl. 1 (on file at the office of the District in Northampton, Pa.).

\(^{145}\) Id. cl. 2.

\(^{146}\) Id. cl. 3.

\(^{147}\) Id. cl. 5.

\(^{148}\) Id. cl. 6. It is significant to note that uniform operating standards and emission limits were proposed by the District's Control Engineer and adopted by each of the members.

\(^{149}\) Id. cl. 4(b).

\(^{150}\) The ordinance that will be considered is that enacted by the Township of Lower Nazareth, Pennsylvania.

\(^{151}\) Township of Lower Nazareth, Pa., Ordinance No. 20, Aug. 3, 1966 [hereinafter referred to as Lower Nazareth Ordinance], § 3(3)–(6).
Any person to operate or maintain or cause to be operated or maintained any installation, equipment or device which by reason of its operation or maintenance will be capable of emitting smoke, soot, dust, odors, fumes and noxious gases unless he shall install and maintain in conjunction therewith such control equipment as will prevent the emission or escape into the open air of any smoke, soot, dust, odors, fumes, or noxious gases of a character and in a quantity that would violate any of the provisions of this ordinance.152

A careful reading of this provision makes it apparent that most industrial and commercial operations are controlled by the ordinance. Under section 8 "Installation Permits and Operating Certificates" it is illegal for any person to construct, reconstruct, alter or install equipment which is capable of causing emissions prohibited by the Ordinance. Furthermore, an installation permit is required for any equipment which may control emissions. An application for such a permit will only be approved if it indicates that the installation will comply with the appropriate provision of the Ordinance.153

A Department of Air Pollution Control, consisting of a Director and such other personnel as needed, has been established under the Lower Nazareth Ordinance for the purpose of enforcement.154 In performing this duty the Director has the power to enter and inspect,155 require tests to be conducted at the parties' expense,156 and most important, require (by order) alteration of equipment, installations and devices as are needed to make them comply with the provisions of the Ordinance.157 Non-compliance with such a directive is a violation which is, like other violations, punishable by a fine up to $100 for the first offense, and up to $200 for all others.158

The effectiveness of this local action program is not to be gauged by fines levied or violations cited, but rather by the affirmative actions that have been taken to effectuate compliance and the benefits that have accrued therefrom. The industries within its jurisdiction have, since the District came into existence, expended in excess of $31,580,000 to install and operate pollution control devices.159 The benefits to the community have been considerable. For example, a dust fall that was among the worst in the country, ranging in the area of 400 tons per square mile per month, has been reduced by ninety percent with further reductions imminent.160 The value of such cooperative efforts is self evident and

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152. Id. § 3(2) (emphasis added).
153. Id. § 8(3).
154. Id. § 4. Once the Director of the District is appointed each individual member of the District names him as the Director of Air Pollution Control in their respective municipality.
155. Id. § 5(4).
156. Id. §§ 9(5) & (6).
157. Id. §§ 9(2).
158. Id. §§ 11.
159. Letter from Mr. R. Emmett Doherty, Director, Lehigh Valley Air Pollution Control District, dated Jan. 5, 1971, on file at Villanova Law Review office.
160. Particulate fallout was the principal pollution problem in this area and the prime reason for establishing the District. The area is the center of the portland
the minimal costs at which they can be conducted makes them feasible for even the smallest municipalities.161

The Air Pollution Control Board of Greater York came into being in 1966 and is composed of seven contiguous municipalities: one city, two boroughs, and four townships.162 The agreement by which the individual political units joined forces is all but identical to that utilized in forming the Lehigh Valley Air Pollution Control District163 and therefore will not be considered. It seems sufficient to recognize that it called for the formation of a regional board, the passage of uniform pollution ordinances, and the appointment of a director to enforce them.164 A model air pollution control ordinance was formulated and enacted in almost unaltered form by all members. This Model Ordinance will presently be considered.

The Model Ordinance is a general document with broad coverage as reflected by its statement of purpose:

[I]t is hereby declared to be the purpose of this Ordinance to impose such controls and regulations on the emission, discharge, or escape into the air of smoke, soot, dust, ashes, fumes, mists, vapors, gases or other contaminants as may be necessary to maintain such reasonable degree of purity of the air resources as will promote and protect the public health, safety and welfare.... 165

Article II of the Model Ordinance provides for the creation, with other members of the organization, of an Air Pollution Control Board (an administrative body) which is charged with the task of hiring a Director,166 promulgating rules and regulations related to enforcement of the Model Ordinance, and serving as an administrative appeals board. The Director has the duty of enforcing the various ordinances of the member communities.167 Contained in the Model Ordinance are clauses specifically covering the following pollutants: black smoke,168 dust,169 lime, limestone cement industry in the Commonwealth with no fewer than a dozen quarries and an equal number of cement mills in operation. It is submitted that since the portland cement industry is one of the dirtiest and the current level of particulate fallout has been so substantially reduced, the District has proven to be a "showcase" of effective pollution control.


162. The municipalities composing the Air Pollution Control Board of Greater York are: The City of York; the Boroughs of West York and North York; the Townships of Manchester, Spring Garden, Springettsbury, and West Manchester [hereinafter referred to as the Greater York Organization].

163. See pp. 912-13 supra.

164. Joint Agreement to form the Air Pollution Control Board of Greater York, June, 1966 (on file at the Board offices in York, Pa.).

165. AIR POLLUTION CONTROL BOARD OF GREATER YORK, Model Air Pollution Con-
trol Ordinance, art. I, § 2 (1968) (as amended June 26, 1969) [hereinafter referred to as Model Ordinance].

166. Director at all times refers to the Director of the Greater York Organization.


168. Id. art. III, § 1.

169. Id. art. III, § 2.
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or slack lime dust, sulfur or sulfur compounds, particulate matter, and open burning. Moreover, there is also an omnibus clause covering “any type of air pollutant or contaminant” which has or may become “detrimental to and likely to endanger the public health or to adversely affect the comfort and repose of the general public or to cause, or have a tendency to cause, injury or damage to property or business.”

The Model Ordinance has very stringent regulations covering the installation and/or operation of particular types of equipment. No ordinance thus far treated can point to a more comprehensive and demanding provision in the area of installation permits and operating certificates. That provision reads in part:

No person shall operate or cause to operate any existing, new, remodeled, reconstructed or altered equipment unless he shall have proper authority in the form of an operating certificate from the Director for operating such equipment.

Furthermore, if such equipment can not meet the standards of the Model Ordinance the owner or operator must request a temporary operating certificate to continue his operations. Such a certificate will only be granted, however, after the applicant has precisely designated the corrective measures that will be taken to achieve compliance with the Model Ordinance and how long it will take to accomplish the same. Upon the issuance of a temporary certificate the Director stipulates the period of time that it shall cover. This portion of the ordinance is extremely valuable for it allows the Director to use his discretion to favor those making a good faith effort toward compliance while at the same time applying pressure to the unwilling who require prodding to act. The operation of pollution emitting equipment without a certificate is a per se violation of the Model Ordinance with each day of operation constituting a separate offense.

The initial act of enforcement under the Model Ordinance is the issuance by the Director of a notice of violation stating specifically the transgression involved and what must be done to correct it. In addition, he may prohibit continuation of the activity causing the violation until it

170. Id. art. III, § 3.
171. Id. art. III, § 4.
172. Id. art. III, § 5.
173. Id. art. III, § 6.
174. Id. art. III, § 7.
175. Id. art. IV.
176. The type of equipment involved is:
[Equipment capable of emitting into the open air smoke, soot, dust, fumes, vapors, odors and noxious gases, or products of combustion or incomplete combustion, or any equipment, device or apparatus, the use of which may eliminate or reduce or control the emission of any air contaminant. . . .

Id. art. IV, § 1 (exceptions omitted).
177. Id. art. IV, 11. For the meaning of the term “equipment,” see note 176 supra.
178. Id.
179. Id. art. IV, § 12.
180. Id. art. V, § 1.
is corrected and require tests to be conducted at the parties' expense. Upon receipt of an order from the Director, the recipient is obligated to act as directed and failure to do so constitutes a separate violation of the Model Ordinance. The first violation is punishable by a fine up to $100 with the maximum fine on subsequent violations being $200. As was the case in the Lehigh Valley area, the measure of accomplishment realized in the Greater York area is in the general improvement of the environment. Since the Air Pollution Control Board of Greater York was established, the industries within its jurisdiction have spent $5,103,700 for the acquisition and installation of air pollution control devices. The success of the program in the Greater York region is mirrored in the Director's statement that:

All of the industries with air pollution problems in the area are either under commitment to abate their air pollution problems or have already undertaken an abatement program.

The cost to the community for the operation of the Greater York Organization is indeed minimal in light of its returns — the budget for 1970 was $20,000, of which seventy-five percent came from the federal government.

The Greater York and Lehigh Valley programs seem to clearly demonstrate that a very meaningful and inexpensive campaign can be waged on the local government level to abate and control environmental pollution. The significance of these programs was placed in a national perspective by Mr. Thomas Moran of the Federal Air Quality Control Commission when he stated that the air pollution control programs in York and the Lehigh Valley were the most effective programs in the country in terms of actual pollution control.

IV. Conclusion

In part II it was determined, with one exception, that while there is no express statutory grant of power to Pennsylvania municipalities for the regulation of environmental pollution, they could so act pursuant
to "implied powers" incident to those "expressly granted power" to act in the interest of the "general welfare." It is important to note, however, that all too frequently a local political unit will assume that it lacks the power to regulate pollution when there is no specific statute so indicating. The uncertain status of such action also provides indifferent local officials and lawmakers with a ready excuse to explain away their lethargy in this sphere of municipal affairs. Thus, action by the General Assembly specifically granting to municipalities the authority to act in the abatement and control of pollution would be of considerable value. Not only would it remove uncertainty as to the validity of such local government action; but it would also bring forward the absolute power to act in controlling pollution, thus making elected officials more responsive because of electorate awareness of its existence. Given the general populace's growing concern with the pollution of our environment, an awareness by the electorate that local governmental units have the express authority to act could be a most meaningful impetus toward the establishment of local pollution control programs.

The value of such legislation has not gone unrecognized. On April 9, 1969, Representatives Eugene M. Fulmer, Austin J. Murphy, Michael J. Needham and Orville E. Snare, introduced in the General Assembly a series of bills specifically conferring power upon local governing bodies to regulate all forms of air pollution. These bills would have amended the township, borough, city and county codes by adding thereto a specific grant of authority to regulate all forms of air contamination. These amendments, if adopted, would have expressly empowered any and all municipalities in the Commonwealth to regulate air contamination as well as provide fines and penalties for noncompliance with said regulations. Unfortunately these bills never emerged from the Committee on Local Government of the Pennsylvania General Assembly during the 1969-70 Session and are now defunct. Senator Murphy, one of the sponsors of these bills, is planning to reintroduce them in the current legislative session and once again campaign for their adoption. It is submitted that

192. See pp. 899-900 supra.
193. See DEPARTMENT OF INTERNAL AFFAIRS, supra note 24, at 1.
195. The specific clause granting "power to regulate" is common to the five Bills and reads as follows:
The [governing body of the political unit] shall have the power, by resolution or ordinance, to regulate all forms of air contaminants including but not limited to the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes, or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic or radioactive substances, waste, or any other matter in such place, manner, or concentration injurious to health, safety, or welfare of the public, business, or property within the [political unit]. Said regulations may include provisions for the payment of fees for examination of plans and issuing permits, for inspection of fuel-burning devices, and issuing certificates of compliance with such regulations, and providing for fines and penalties, as hereinafter set forth, for the violation of any such regulation...
196. Letter received from the Honorable Austin J. Murphy, Pennsylvania Senate, dated June 7, 1971, on file at the Villanova Law Review office.
these bills represent a positive step toward providing an adequate power source for local government activity in pollution control. Considering the value they would add to pollution control in Pennsylvania, it is hoped that these bills will, upon their reproposal in this session of the Legislature, be promptly enacted.

One final point that remains to be covered is the role of the advocate in the pollution problems of his local municipality. When presented with a pollution problem by a client most attorneys are prone to think in terms of some legal action to resolve the difficulty. If the problem is not amenable to such a resolution, as exists with many real and troublesome incidents of pollution, an attorney may deem himself unable to assist his client. This might be a grave mistake, however, for the attorney might well be able to avail his client of an administrative or legislative remedy. Early in this Comment it was noted that the Commonwealth has strict statutes regulating air pollution. An incident of pollution that is troublesome enough to bring a client to the lawyer's office is more likely than not a violation of the state Air Pollution Control Laws. If such a violation exists, the attorney, by notifying the appropriate official may well see to his client's needs more effectively and economically than if he had filed suit. There are shortcomings to these statutes, however, and it should be kept in mind that the most effective anti-pollution action seems to occur on the local level. If a local air pollution control program exists, the advocate should obviously look to the responsible public official and state his complaint. This course of action may not be available to most attorneys since few municipalities have enacted anti-pollution provisions.

An attorney who is faced with such a nonjusticiable pollution problem and finds no satisfactory administrative remedy may find others similarly situated. In fact, an investigation of the community may reveal other similar or related problems of pollution. In light of the current public attitude toward air pollution, such a situation might well set the stage for the enactment of local pollution control provisions.

An attorney who finds himself in the position of having a nonjusticiable local pollution problem should not lose sight of the fact that legislative reform is a viable alternative to judicial action and may be easy to accomplish on the local level. Considering the overriding public concern with air pollution and the existence of a local problem of any significance or a number of minor significance, a local ordinance regulating air pollution

197. There can be any number of pollution problems that cause a real problem to individuals but which cannot be established as a nuisance and therefore brought within any civil remedy. For discussion of the difficulty of proving nuisance, see Comment, The Use of Private Action to Control Environmental Pollution in Pennsylvania, 16 Vill. L. Rev. 920 (1971).

198. See Comment, supra note 4, at 860-63.

199. The enforcement personnel are spread thin and this may cause a delay in the investigation of a complaint of a local pollution problem. The enforcement procedure is such as to make lengthy delays and appeals more than a rarity. Moreover, the state agency must be concerned with the most compelling problems first with the result that action on any one complaint of lesser degree may be postponed or dropped. See generally Comment, supra note 4, at 861-62.

200. See note 190 and accompanying text supra.
might be promoted and enacted with a reasonable effort. From the client's
point of view, this could represent a lasting, economical and reasonably
swift remedy for his present problem as well as future reoccurrences. 201
It is hoped, however, that when such pollution problems exist in a com-
community, local advocates will not be restrained from acting simply because
they are not being retained for that purpose. The attorney is often the
most logical person to initiate movements for local reform particularly
because of his familiarity with legal processes.

It has been shown in this Comment that control of air contamina-
tion is a valid function of local government. The feasibility and effective-
ness, as well as the legality, of such municipal programs has been set
forth. A few local political units have seen fit to effectuate community
action to control air pollution in their districts and thereby fulfill their
responsibility to protect the general health and welfare of the community.
There are many other municipalities, however, that have not yet acted or
even begun to officially recognize their responsibilities in this area. It is
hoped that this Comment will be instrumental in bringing about respon-
sive action to that end.

Dennis W. Alexander

201. Once such an ordinance is enacted, the cost of its enforcement is borne by
the community at large. Also, a local administrative action is likely to result in a
more certain and rapid disposition of the controversy. See generally Comment, supra
note 197.