

3 ADEQUACY OF TECHNOLOGY FOR POLLUTION ABATEMENT

Judicial review shall be based. Should an alleged violator of the standards seek to challenge their validity or applicability, the court is instructed to make a determination as follows:

The court, giving due consideration to the *practicability* and the *physical* and *economic feasibility* of complying with such standards, shall have jurisdiction to enter such judgment and order enforcing such judgment as the *public interest* and the *equities* of the case may require. [Emphasis added.]

These instructions, it should be pointed out, command consideration of a number of factors other than enhancement of quality. In fact, they spell out rather precisely the considerations that have been inherent in virtually all prior court determinations relating to pollution. Furthermore, these are the considerations that have been stated, or at least implied, in State legislation and which have served as a basis for administrative decisions made by State regulatory agencies.

At this point it is relevant to comment on a frequent criticism that State regulatory agencies spend "too much time" in reaching determinations of pollution-control requirements. Apparently what is overlooked is that in these endeavors the agencies have been thoroughly aware of how the courts will analyze such requirements. They earnestly seek to resolve such complex issues as practicability, physical and economic feasibility, the public interest and the equities involved prior to the formulation of regulations. As a result they have been quite successful in minimizing the need for judicial review and court determination of their actions.

Long ago State agencies learned that resort to court action is not only a costly procedure but a far slower process than is generally realized. It has not been unusual for legal proceedings to stretch out over a period of a decade—and in the meantime nothing is accomplished in actually curbing pollution.

The promulgation of standards—without some cognizance of factors other than the dictum of "enhancing the quality of water"—may disappoint the hopes of those who believe that this may speed up procedures for controlling pollution. Nor can it be said that the recent amendments to the Federal law have as yet furnished a basis for a clear-cut understanding of the goal or objective of national policy in water pollution control.

REGIONAL AND BASIN APPROACHES

Many problems of pollution abatement transcend the political boundaries of municipality, county, and State. Many encompass more than a single stretch or even multiple stretches of a river and its tributaries. Examples of institutional attempts, many successful and some only partial in function, abound in the United States and elsewhere. They evolved historically to meet acute issues. They rarely appeared full blown in order to meet nonexistent or even faintly discernible future problems. Almost everywhere, the regional or basin machinery came into play because of acute problems or threats of obvious emerging hazard. The history of these institutional approaches is one of pragmatic response to challenge—sometimes belated, occasionally with real foresight.

Some selected examples of these approaches are briefly reviewed here. They may be contrasted with simpler, but experienced, efforts