



Recommendation 75-4

Procedures to Ensure Compliance by Federal Facilities with Environmental Quality Standards

(Adopted June 5-6, 1975)

The Federal Government owns or operates over 20,000 facilities, ranging from huge military establishments, national parks, and systems of prisons and veterans' hospitals to individual fish hatcheries, Coast Guard stations and research laboratories. All of these facilities are required by federal law to comply with environmental quality standards established by national, state or local law.

As part of the federal environmental protection program, a 1973 executive order directs federal agencies to assess their pollution control needs, develop plans for improvement and submit those plans and necessary budget requests for inclusion in the President's Annual Budget. This program has achieved significant results. Approximately \$2.4 billion has been expended over the past eight years to improve and install pollution abatement equipment at federal facilities. Nonetheless, instances of noncompliance by federal facilities have persisted. Moreover, there are wide variations among the respective programs concerned with air, water, noise, solid waste and ocean dumping, in the openness and effectiveness of the procedures for securing federal facility compliance.

The Clean Air Act, the Federal Water Pollution Control Act, and the Noise Control Act each require agencies with control over federal facilities to comply with both federal and non-federal pollution control standards "to the same extent (as) any person," unless otherwise exempted by statute. The Marine Protection Act requires all "persons," including federal officials, to obtain a federal permit before dumping waste material in the ocean. Under the Solid Waste Disposal Act, federal agencies need comply only with the United States Environmental Protection Agency's guidelines, which are less stringent than those of some states and localities.

The federal air, water, noise control, and solid waste statutes do not establish or specifically authorize procedures for their enforcement where federal facilities are concerned. This problem is acute when considering non-federal environmental quality standards, which constitute the bulk of the environmental standards federal facilities must meet, because the non-federal efforts to impose their enforcement procedures have been challenged by federal



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

agencies. Two United States Courts of Appeals have reached opposite conclusions concerning the authority of states to require federal facilities to obtain air emission control permits required of all non-federal sources of air pollution; a third Court of Appeals has held that federal facilities must comply with state permit requirements with respect to water quality. But any decision, even of the Supreme Court, will leave substantial procedural problems. If the authority of the states to impose their permit and other enforcement procedures upon federal facilities is upheld, some agencies will have to comply with a multitude of different state and local procedures. Because of the insufficiencies of the statutory provisions, a result denying such authority to the states would leave only the present fragmentary and ineffective federal procedures to ensure the compliance of federal facilities with environmental quality standards.

Recommendation

1. (a) The Clean Air Act, the Noise Control Act and the Federal Water Pollution Control Act should be amended to vest in a single federal agency the exclusive authority to develop and administer procedures to ensure compliance by federal facilities with non-federal environmental quality standards. That agency should consider the use of emission control permits where they are not now employed.

(b) If the Congress amends the Solid Waste Disposal Act to require that federal facilities comply with non-federal environmental quality standards, the amendment should vest in the single federal agency referred to in paragraph (a) the exclusive authority to develop and administer procedures for compliance with such standards by federal facilities.

2. Procedures employed to ensure compliance by federal facilities with state, interstate and local environmental quality standards should provide for: (i) local public notice and notice to local officials, (ii) opportunity for a public hearing (but not for a trial-type hearing except on issues of specific fact that the agency finds may best be resolved by trial-type hearing), and (iii) authority for the presiding officer at any such hearing to make recommendations concerning compliance.



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Citations:

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4 ACUS 28