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WHAT THE ATTORNEY SHOULD KNOW ABOUT THE CLEAN AIR ACT

The scope of the federal Clean Air Act (42 U.S.C. § 1857 et seq. (1970)) transcends the seemingly narrow subject matter which can be inferred from its title. At issue in bringing to fruition the mandate of the Act are such far-reaching questions as growth control and land use policy. One current effect of the Act is the furious debate and litigation surrounding its requirement, evolved from the Act's legislative history and judicial interpretation and from administrative rule making, of "no significant deterioration." This phrase means, with respect to areas where current air pollution levels are already equal to, or better than, the air quality goals established by the Clean Air Act, that the Administrator of the Environmental Protection Agency should not approve any State plan for implementation of the Act which does not provide for the maintenance of such "pristine" air quality. (The administration of the Act was transferred to the Administrator, from the Secretary of Health, Education and Welfare, in a 1970 reorganization.) Neither Virginia nor any other State has submitted an implementation plan which provides for the prevention of "significant deterioration" of such "pristine" air. Carl Bagge, the president of the National Coal Association, has expressed the view of the development interests by noting that the lack of a legal definition of what constitutes "significant" deterioration means that no industry can build any plant which emits any air pollutants whatever unless the industry is willing to gamble on the ultimate definition of the word. The result, Bagge says, is an instant no-growth policy. If, however, the non-degradation rule is rejected either by the courts or by new legislation, it is conceivable that industry would be encouraged to move to areas with clean air, in order to avoid stringent emission controls in urban places--hence the prediction of Senator Cooper of the Senate Committee on Public Works that the Clean Air Act "will perhaps have a greater significance and impact than any bill in this country."

Land use decisions form the first and most influential link in the chain of events which eventually determine air quality. The States and the federal government agencies have been ordered to control land use and to include provisions for such control in their implementation plans. How, or whether, the Virginia Air Pollution Control Board intends to control land use to implement the non-degradation part of its proposed plan will be a continuing topic of discussion in this newsletter. Already the Environmental Protection Agency is forcing land use control in connection with such things as parking lots, shopping centers, housing developments, and highways. 40 C.F.R. pt. 51 (1973). The lawyer involved in such development would be well advised to do more than check local land use regulation; in Virginia he should clear the way with the

State Air Pollution Control Board
Ninth Street Office Building, Room 1106
Richmond, Virginia 23219.

The Clean Air Act provides for enforcement by citizens, with discretion granted to the court to award costs of litigation, including reasonable attorneys' and expert witness fees, to any party whenever appropriate. 42 U.S.C. § 1857h-2(d) (1970). There are, however, specific procedures which must be followed. One section, 40 C.F.R. pt. 54 (1972), can be invaluable to the lawyer or client working with limited resources. The section also shows the desirability of consulting the local State air agency whenever one is engaged in a land use activity that he suspects may have air pollution consequences. The need for such consulting is increased by the greater possibility of litigation spurred by the incentives of the citizen-enforcement provision cited above.

When one seeks to make use of the citizen-enforcement provision of the Act, the first problem is gathering the information about the alleged violations necessary to make his case. All data acquired by means of the information-gathering authority granted by the Act is required to be made available to the public, subject only to protection of the proprietary interest of the investigated party. 18 U.S.C. § 1905 (1970), 42 U.S.C. § 1857c-9(c) (1970). The potential value of such a "freedom of information" provision is obvious, but it has not yet been realized because of the small amount of information accumulated. The situation is bound to improve rapidly, however, as time passes and as technology and scope of monitoring pollution develop more fully.