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Enforcing Air Pollution Controls: Case Study of New York

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BOOK REVIEWS

Enforcing Air Pollution Controls: Case Study of New York

E. R. Schachter

New York: Praeger Press Pp. 104

A case study of air pollution controls in New York City seems especially timely and appropriate; few would argue that it is not among the nation's most polluted cities. High levels of most pollutants can be found and are frequently cited as major causes of irritation, illness, and even death. Despite these problems, the city has one of the most vigorous and comprehensive metropolitan abatement programs in the nation.¹ In fact, in the foreword to *Enforcing Air Pollution Controls*, Amitai Etzioni asserts that: "No one interested in the way societies operate or change, or in the ways laws work or fail, can afford to overlook [the book's] findings."²

The author's primary thesis is that effective, local enforcement of tough laws is the key to control and abatement of air pollution. The issue of enforcement, says Schachter, is of such importance that the feasibility of a law's enforcement should be considered along with the more traditional economic, political, and technical considerations. This emphasis is justified because the level of enforcement is not only a major determinant of a law's success or failure, but also the principal means of attaining clean air.

Although the author strongly supports effective enforcement, she runs into difficulty attempting to operationalize the concept, providing no definition of effective enforcement but, instead, relying on the people who are supposed to do the enforcing to determine if the laws are actually enforced. The reader is presented with a table that indicates whether the level of enforcement for each law is high, low, or altogether absent. However, it is unclear whether these levels are relative to each other, to an objective standard, or to the relative severity of the specific problem. Two examples illustrate this.

New York City limits the sulfur content of fuel oils burned in the city. This restriction is "the only air pollution control law in New York City that is easy to enforce, and that is complied with. . . ."³ Enforcement activity is rated as "high," and the law is supposedly

1. I. Feller, A. Engel & R. Friedman, *Intergovernmental Relations in the Administration and Performance of Research on Air Pollution* 98 (1972).

2. E. Schachter, *Enforcing Air Pollution Controls* vii (1974).

3. *Id.*, at 8.

“the most successful air pollution control law ever enacted by New York City. . . .”⁴ Despite the successful enforcement of a very stringent law, Schachter acknowledges that New York still has one of the highest concentrations of sulfur dioxide in the country!

The level of enforcement activity for the control of asbestos spraying at construction sites is also rated as “high,” although the law was not enforced until 1969. A year after “effective” enforcement began, the author notes that investigators were shocked when they learned about previous inaction on asbestos spraying. Despite many summonses and show cause orders, the spraying of asbestos did not stop, and many industries continued to spray without regard to the air pollution hazard they were creating. A more recent amendment to the city’s Air Pollution Control Code allows the continued use of spraying “despite the fact that it cannot be policed or controlled.”⁵ In both instances, Schachter rates enforcement as high, yet also provides proof that control and abatement of air pollution have not followed high levels of enforcement, thereby seriously impairing her own case.

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4. *Id.*, at 88.

5. *Id.*, at 75.

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