

Booknote

TRANSPORTATION PLANNING ON TRIAL: THE CLEAN AIR ACT AND TRAVEL FORECASTING: MARK GARRETT AND MARTIN WACHS. THOUSAND OAKS, CA: SAG PUBLICATIONS, 1996, 232 PP., HARDCOVER \$42.00, SOFTCOVER \$19.95.

By Thomas H. McConnell*

California's air quality is the worst in the nation.¹ It is reported that although it has improved markedly in recent years, more than three-quarters of all Californians are currently exposed to health-threatening levels of air pollution, and the South Coast air basin exceeded national health standards for smog ninety eight days in 1995.² Although many of the efforts of the federal government to regulate air quality in a way that promotes urban planning have been unsuccessful, recent litigation in Northern California has offered interpretations of the Clean Air Act and the amendments made to it which bolster hope of continued air quality improvement.

The recent litigation is the focus of *Transportation Planning on Trial*. The book supplies a balanced examination of the interaction between regional transportation planning and environmental concerns, with an emphasis on air quality.³ This examination lends well to a reasoned forecast of the direction of future transportation planning.

The discussion involves the extensive litigation comprising *Citizens for a Better Environment v. Deukmejian*,⁴ a federal case which involved the enforceability of state air quality plans. The case received national attention including criticism of the presiding judge for failing to consider the practical implications of his rulings.⁵

One of the authors of *Transportation Planning on Trial* played an

* University of Denver College of Law/Daniels College of Business Juris Doctor, Masters of Business Administration, Candidate 1997.

1. U.S. EPA: U.S. EPA Finalizes Approval of California's Clean Air Plans, M2 Presswire, September 30, 1996.

2. Id.

3. Books Received, 26 *Envtl. L.* 951, 953 (Fall 1996).

4. 731 F.Supp. 1448 (N.D. Cal. 1990) *modified* 746 F.Supp. 946

5. Editorial, *Justices vs. Judges*, *The Wall Street Journal*, January 12, 1990.

integral role in this lengthy and complex litigation.⁶ Both the authors present the subject matter of this complex litigation and its implications in a straightforward, well-organized manner. The book is very useful for transportation planners, policymakers, and practitioners. Its concise overview of the relevant issues and general insight also make it worthwhile for anyone seeking a better understanding of the issues incident to improved air quality.

The book introduces the issues of improved air quality through a synopsis of congressional efforts toward cleaner air. The 1970 amendments to the 1955 Clean Air Act directed the Environmental Protection Agency ("EPA") to establish National Ambient Air Quality Standards. The amendments also required each state to prepare an implementation plan to control air quality. The implementation plan had to bring its respective state into compliance with the Air Quality Standards within three to five years. If the plan failed, the EPA would replace it with a federal mandatory plan.

A number of states' plans failed. Congress amended the Clean Air Act to extend the deadlines for compliance. Even with the extensions, California's plan still failed to bring the San Francisco area into compliance. Thereby setting the stage for the litigation that is the focus of this book.

During the course of the litigation, Congress again amended the Clean Air Act. The legislation included automatic penalties for inadequate state implementation plans, contingency measures to accelerate compliance with the federal standards, and pollution "budgets" for non-complying regions, such as San Francisco. These additions coupled with passage of the 1991 Intermodal Surface Transportation Efficiency Act comprised the current state of federal efforts for cleaner air at the time of the litigation.

Chapter two introduces the litigation. In June 1989 two separate cases were filed by two environmental organizations in San Francisco Federal District Court.⁷ In each action, the state was being prosecuted for noncompliance with the Clean Air Act, as amended. The cases were consolidated to determine the legal enforceability of the commitment made by the state in submitting its implementation plan.⁸

The court held the state bound to its original implementation plan as well as its own proposed contingency measures. In addition, the state had to supplement ineffective contingency measures with additional measures

6. Dr. Martin Wachs participated in *Deukmejian* as a neutral technical expert.

7. *Citizens for a Better Environment v. Deukmejian*, 731 F.Supp. 1448 (N.D. Cal. 1990) & *Sierra Club v. Metropolitan Transportation Commission*, 1991 WL 424981 (N.D. Cal 1991).

8. The cases were consolidated under the title *Citizens for a Better Environment, et al. v. Deukmejian, et al.*, *supra* by order of the court dated August 8, 1989.

quantitatively proven to result in compliance with the federal law. The court emphasized its "get tough" posture by granting an injunction barring future transportation projects until adequate pollution assessment procedures were implemented.

The court went on to make it clear that actual future emission must be consistent with emissions estimates used in the original state implementation plans. Chapter three focuses on how this holding translated into heightened requirements for San Francisco regional transportation models to meet the standards. In order to demonstrate the need for improvement, the authors point out that the standard travel demand models were designed for evaluating different highway lay outs and were not intended to forecast vehicle emissions.

Chapter four evaluates the effectiveness of transportation control measures in controlling air quality, for which there is a understandable dearth of empirical data. The Settlement Agreement and stipulated judgment ending the litigation in August 1992. Major provisions included agreement that procedures and transportation control measures were adequate in making reasonable progress toward compliance. The authors opine that the environmental groups achieved as much as possible by forcing the development of new modeling procedures and the adoption of additional transportation control measures.

Chapter five summarizes the meaning of the holding in the case. Regional agencies will be held to the commitments made in the state implementation plans. The holding serves to alert other regional transportation agencies that current planning models are inadequate in their ability to assess the impact of future transportation projects on air quality. The holding also sparked a major federal research program to improve urban planning models.

