

1-1-1974

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### Recommended Citation

Edward Greer, *Obstacles to Taming Corporate Polluters: Water Pollution Politics in Gary, Indiana*, 3 B.C. Envtl. Aff. L. Rev. 199 (1974), <http://lawdigitalcommons.bc.edu/ealr/vol3/iss2/2>

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# OBSTACLES TO TAMING CORPORATE POLLUTERS: WATER POLLUTION POLITICS IN GARY, INDIANA

*By Edward Greer\**

## INTRODUCTION

This article attempts to explain why it has not been possible to solve the water pollution problem of Gary, Indiana.<sup>1</sup> Gary is an industrial city of 175,000 people, the majority of whom are black. Since 1968 the Mayor of Gary has been an insurgent black politician, Richard Gordon Hatcher. The City's economy is dominated by the Gary Works of the United States Steel Corporation, the country's largest integrated steel complex, whose annual capacity is eight million tons. Gary was originally built by U.S. Steel as a company town, and its impact on the local political scene continues to be pervasive.<sup>2</sup>

Governmental efforts at all levels to abate the water pollution in Gary have come to an impasse, and this article seeks to analyze these efforts and the nature of the problem in context of the successful campaign by U.S. Steel to avoid confronting the problem.<sup>3</sup>

## I. HISTORICAL DEVELOPMENT OF WATER POLLUTION IN GARY

### *A. Early History*

Gary, Indiana is an exemplary case of industrial despoliation of the American environment. Its air pollution problem is evident to even the most casual traveler. Gary's water pollution problem, however, is even more severe and intractable.

This was not always the case, however, for the City and the mammoth United States Steel Gary Works did not even exist before 1906. In the late nineteenth century the area comprised two exclusive hunting clubs of Chicago magnates. One of these clubs included among its members John W. Gates, President of Illinois Steel (one of the constituent parts of U.S. Steel), and Marshall Field, a founding director of U.S. Steel. Field was instrumental in the decision to

build a new mill in the Chicago area, rather than in the traditional Pennsylvania region.<sup>4</sup> The actual site decision was made by the chairman of the board, Judge Elbert Gary, and was based on a variety of factors (e.g., availability, price, transport, markets, a favorable state legislature, etc.)<sup>5</sup>

Gaining the special acquiescence of the pliant Indiana state legislature, U.S. Steel engaged in massive landfill into Lake Michigan, annihilating its natural state forever.<sup>6</sup> Radical changes were also wrought on the Grand Calumet River, which had meandered through Gary on what is now the demarcation between the Gary Works and the City proper. All of this was but a small part of the colossal engineering feat of building the world's largest steel mill and the city to support its work force. The Grand Calumet River was first surveyed in the 1830's and the original survey notes indicate that the River was wide and, although shallow, navigable. Until early in the twentieth century, lumber and fruit boats proceeded up the Grand Calumet from Lake Michigan and docked in Hammond, the city due west of Gary. There are pictures of three masted schooners docked at Hammond in 1905, but by 1910, after the construction of the Gary Works, regular commercial navigations had ceased.<sup>7</sup>

As a result of the Corporation's engineering, a public waterway in effect became the private property of U.S. Steel. The Grand Calumet River now flows westerly along the Corporation's property until it enters Indiana Harbor Canal. Indiana Harbor Canal, in turn, empties into Lake Michigan. Depending upon local weather conditions, between a third and the entire flow of the Grand Calumet River enters Lake Michigan.<sup>8</sup>

From the outset of its operations, the Gary Works has utilized the Grand Calumet River as a free disposal system for its unwanted chemical effluents. Before the Gary Works and the other large manufacturing plants were built in the Calumet region, the Gary beach was the center of a major fishing industry. Large commercial catches of whitefish and sturgeon "were caught in nets which were pulled up out of the water by windlasses set up on the beach."<sup>9</sup> However, by the 1940's the fishing industry was destroyed. Algae growth in southern Lake Michigan (caused by industrial dumpings of large amounts of ammonia-nitrogen and phosphates) led to a collapse of the environment necessary to support fish populations.<sup>10</sup>

### *B. Current Problem*

Water pollution has become a severe problem in the United

States only in the wake of the industrial expansion which followed the Second World War.<sup>11</sup> Industrial production is the main cause of water pollution in the United States.<sup>12 13</sup> (Although there are hundreds of thousands of manufacturing facilities, a small fraction of them — some 10,000 — utilize 90% of all industrial water.)<sup>14</sup> Four industrial groups — petroleum, organic chemicals, pulp and paper, and primary metals — are responsible for over one half of all water pollution.<sup>15</sup> The primary metals group utilizes one third of all the water used by manufacturing,<sup>16</sup> and the steel industry utilizes one fifth.<sup>17</sup>

The effluents of steel production are extremely damaging to the bodies of water into which they are dumped. Those rivers which receive major steel plant discharges are among the most polluted in the country,<sup>18</sup> and the steel industry, whose rate of profits has substantially declined over the past decade, has been particularly reluctant to make the major capital investments necessary to ameliorate the problem.<sup>19</sup>

The overall result of the industrial growth in the post-war period has been to continually aggravate the nation's water pollution problem.<sup>20</sup> Notwithstanding the development of additional water pollution treatment facilities, the gross discharges by manufacturing firms into the nation's streams grew by 40% between 1957 and 1971.<sup>21</sup> (In the steel industry, new technologies are tending to increase "either the amount or the toxicity of water pollution.")<sup>22</sup>

The causes and meaning of this phenomenon can best be seen by examining the activities of U.S. Steel's Gary Works, which has been the single largest polluter of Lake Michigan for decades.<sup>23</sup> Its dozens of sewers empty over 600 million gallons of water each day into the Grand Calumet and Lake Michigan,<sup>24</sup> and the discharge of this water after its use in steelmaking processes has changed the Grand Calumet River downstream to the extent that its entire bottom "is composed of minute iron particles."<sup>25</sup> The River is entirely unfit for any recreational activity. The ammonia-nitrogen discharged from the Gary Works is a major contributor to the eutrophication of southern Lake Michigan.<sup>26</sup> The cyanide level — due to a discharge of a ton every day from the steel mill — is perhaps sufficient to cause the death of anyone foolhardy enough to drink from the reddish brown water covered with oil slicks.<sup>27</sup> Not even sludge worms can live in the Grand Calumet; its only life is blue green algae.<sup>28</sup>

The impact of these effluent discharges extends into the Lake itself in the Calumet area. "Whereas in the clean bottom areas of Lake Michigan there are many kinds of organisms . . . this area

exhibits only a few kinds. Sludge worms and aquatic scuds are the most numerous, but bloodworms and fingernail clams are sometimes abundant."<sup>29</sup> The Public Health Service has charged that the Gary Works is contributing to a practically irreversible pollution of the Lake.

The fragmentary evidence available (monitoring did not begin until the mid-1960's and is still grossly inadequate) strongly suggests that discharges in every major category of effluent kept increasing until 1968. In that year, new pollution control equipment sharply reduced the ammonia-nitrate and phenol discharges; but those of oil, iron particles and other solid particulates either stabilized or continued to climb. In 1969 and 1970 there were apparently modest decreases in these discharges.<sup>30</sup>

In January, 1972, the Illinois Attorney General brought suit against the Gary Works, charging that it was still discharging 104,000 pounds of metal and 35,000 pounds of oil daily.<sup>31</sup> The most recent available data indicate that these fantastically high levels of effluent discharges are continuing today.<sup>32</sup>

The discharges by the Gary Works do not exhaust the Corporation's damage to Lake Michigan's ecosystem. The Chicago South Works has had a very bad record as well; and even the U.S. Steel Waukegan facilities are a part of the problem.<sup>33</sup> There are also exceptional "outbreaks" of huge discharges which take place at the steel mills on an intermittent basis. For example, on November 12, 1971, the sewer at the Gary Works coke plant — which ordinarily discharges clean water — emitted an oil spill which caused a nine mile slick.<sup>34</sup>

Furthermore, the giant fleet of ore ships which the corporation maintains on Lake Michigan to transport iron ore to the Gary Works periodically discharges oil into the Lake. Three fourths of the annual 60 million tons of cargo docked in the Calumet are materials for the steel industry.<sup>35</sup> The impact of this is visible to the naked eye and, as the summer shipping season progresses, the Gary beaches have more and heavier oil slicks.

In theory, the City of Gary, the State of Indiana, and the federal government can each require that U.S. Steel stop using the Grand Calumet River as an open sewer. None of them have done so.

## II. IMPASSE OF GOVERNMENTAL CONTROL

### A. *City of Gary*

In distinct contrast to the serious (albeit only moderately successful) efforts of the administration of Mayor Richard Hatcher to con-

trol Gary Works' air pollution, the city of Gary has taken no substantive action with respect to water pollution.<sup>36</sup> Part of the reason is that while air pollution's impact is maximized in the immediate vicinity, Gary Works' water pollution affects the City less directly.

When the City's water works were constructed by U.S. Steel engineers between 1906 and 1908, they utilized the most advanced techniques and the water works were constructed for an anticipated population of 200,000. (This plan was so farsighted that a second water works was not needed until the mid-1960's). The original water works has an intake tunnel which passes under the Gary Works and draws in water three miles from the Lake's shoreline.<sup>37</sup> The prevailing water flow in southwestern Lake Michigan is from south to north in a westerly direction. Thus, the pollutants discharged from the Gary Works (entering Lake Michigan west of the City at Indiana Harbor) do not pass into the City's own water system. Instead, some three to four days after discharge they reach Chicago's water system. Consequently, although Gary's water has a high iron particle count which gives it an unpalatable taste, it is relatively safe for human consumption.<sup>38</sup>

Indeed, until Richard Hatcher campaigned for Mayor in 1967, the question of water pollution had never been a public issue in local politics.<sup>39</sup> His program called for a local water pollution ordinance to be administered by a new local agency,<sup>40</sup> but after his election nothing was done to implement this proposal. There were several apparent reasons for this inactivity. First, the Mayor did not control the Board of Health for his first three years of office; nor did he have a majority on the City Council throughout his first term. This limited his actual political power in this area quite severely. Second, the Administration's top aides and officials assigned a very low priority to Gary's water pollution. Third, there was no significant local political pressure for action on the matter; whatever environmental reform energies existed in Gary were concentrated on the more acute problem of air pollution. Fourth, City Hall officials had a serious lack of knowledge about what was actually happening to the Grand Calumet. Finally, there was a tacit fear about engaging in controversy with U.S. Steel if it was at all avoidable. In large part this fear was based on the notion that pressure on the Corporation to clean up its water pollution might cause it to leave Gary and seriously injure the economy.<sup>41</sup>

Such a fear was not without objective basis. The costs of major pollution control installations in older steel mills often play a significant role in management decisions to phase them out of produc-

tion.<sup>42</sup> And, in general, there is good reason for working class people (and the politicians who are sensitive to their felt needs) to suspect that they will wind up bearing the costs of environmental reforms.<sup>43</sup> These considerations together created a climate of opinion in City Hall which was not conducive to vigorous initiatives in the area of water pollution abatement.

There was, however, one tentative initiative in this area, taken after the Mayor was finally able, in January, 1971, to appoint a new Health Commissioner, Dr. Herschel Bornstein. Dr. Bornstein's first effort involved a request to the Indiana Stream Pollution Control Board to perform laboratory tests on water samples to be taken from the Grand Calumet to determine if there was a violation of state law. This request was refused on the grounds that this service was only performed for local Health Departments when drinking water samples were involved.<sup>44</sup> Soon thereafter, one of the key officials involved in this decision was appointed by another steel company as their Director of Environmental Control.<sup>45</sup>

Dr. Bornstein then attempted to proceed on his own and obtained a search warrant from the Gary City Court on June 24, 1971. Such an action was unprecedented in the City's entire history. Dr. Bornstein arrived at the Gary Works with his warrant, took water samples from the Grand Calumet River, and sent them off for analysis to a private laboratory. Gary Works Superintendent J. David Carr angrily referred to the event as a "raid" and charged that it was a "carefully organized effort to create an incident."<sup>46</sup>

Despite his action, Dr. Bornstein found himself in an impasse as neither the state nor federal authorities responded to his test results. The Mayor, too, did nothing to increase the Health Commissioner's legal powers so that he could effectively act on his own.

Mayor Hatcher's 1971 campaign platform—which was published in April 1971, just prior to the "raid" — represented a step backward from his previous pledge. The new platform only stated: "Develop a municipal ordinance [on water pollution] if it seems advisable. . . ." <sup>47</sup> Apparently, he does not think that such an ordinance is advisable for, despite his new City Council majority, he has taken no action. Meanwhile, Health Commissioner Bornstein resigned, in part because he felt a lack of support for his initiatives from City Hall.

### *B. The State of Indiana*

While the City has been moribund, the State of Indiana has been worse. Perhaps not surprisingly for a state government with such an

unusual solicitude for giant corporations, it has in effect served as a legal shield for violations of the water pollution laws by U.S. Steel.<sup>48</sup> Even though Indiana does have the power to regulate water pollution, its statute is relatively weak.<sup>49</sup>

More significantly, the State Board lacks both the funding and the impetus to effectively enforce the water pollution regulations, and as a result few violators have been prosecuted.<sup>50</sup> Not until the federal government passed the 1965 Water Quality Act did the Indiana Stream Pollution Board even begin to go through the motions of obtaining industrial compliance with the Indiana Law.<sup>51</sup>

U.S. Steel officials have expressed the highest regard for the Indiana Stream Pollution Control Board; an understandable reaction given its behavior.<sup>52</sup> It took the Board almost two years after the 1965 Federal Lake Michigan Water Quality Conference to promulgate specific water quality criteria for the Grand Calumet River. These criteria were lax. Limits were placed on discharges of dissolved solids, ammonia-nitrate, and phenol; but no limits were placed on iron particles or cyanide, and those on suspended solids and oil were completely inadequate.<sup>53</sup>

U.S. Steel was then, and still remains, in violation of these standards. After three years the Indiana Board decided to hold a hearing on the matter. On August 20, 1970 this procedure culminated in an order that U.S. Steel cease discharging "raw and inadequately treated waste water" into the Grand Calumet River; and that it "institute at once the necessary procedures for the construction of additional waste treatment facilities needed to eliminate the pollution of waters." The Corporation was to be given 18 months to carry out the construction work.<sup>54</sup> U.S. Steel's response to the first legal demand that it stop polluting since it built the Gary Works was to request a rehearing, at which time the Board reaffirmed its order. On appeal U.S. Steel pointed out that the Board had made numerous vital errors in its conduct — including its failure to take a transcript at the initial hearing. The Superior Court reversed and remanded the case to the Board which ordered a new hearing.<sup>55</sup>

This court decision was due to the Board's inadequate case, not a pro-industry bias by the Court. For at virtually the same time, the same court upheld a far stronger order of the Gary Air Pollution Review Board with respect to Gary Works' air pollution.<sup>56</sup>

Thus, in April, 1971, the State of Indiana found itself beginning its laborious enforcement proceeding against U.S. Steel. The Corporation's position at this *de novo* hearing was: "We all pollute."<sup>57</sup> Since that time, the State has taken no further actions leading to binding orders against U.S. Steel.<sup>58</sup>



*C. Federal Regulatory Authorities**1. Federal Water Pollution Control Act<sup>59</sup>*

The failure of the federal government to stop Gary Works' water pollution rests on a complex interaction of laws, administrative regulations, and bureaucratic decisions. The outcome, however, has been similar to that of local and state efforts.

There are two main federal laws which deal with water pollution: the 1899 Rivers and Harbors Act (The Refuse Act),<sup>60</sup> which remained dormant for many years, and the Federal Water Pollution Control Act of 1948, which was amended in 1956, 1961, 1965, 1970 and 1972. The initial Water Pollution Act was completely ineffective due to an absence of viable enforcement procedures and the fact that it gave the states veto power over potential federal enforcement proceedings. The 1956 and 1961 amendments resulted in no significant changes.<sup>61</sup>

The 1965 Amendments created "water quality standards"<sup>62</sup> which were jointly determined by the state and federal authorities. However, the process of determining these standards was so complex that several state standards were still not set in 1972.<sup>63</sup> Moreover, these standards did not forbid industrial pollution but only called for a reduction in its amount, and they allowed for a lengthy time lag.

Nor did the 1970 Water Quality Improvement Act fundamentally alter this situation. Water quality standards were still promulgated by the states; and the mechanisms of enforcement remained too elaborate to be readily workable. In fact, until the creation of the Environmental Protection Agency, the Justice Department had prosecuted only one case under the 1970 Amendments.<sup>64</sup>

With this background in mind, it is not surprising to discover that the actions taken by the federal government to stop Gary Works' pollution under the Water Pollution Control Act were quite limited. In March, 1965, the federal government convened a Conference on Lake Michigan pollution. The purpose of this Conference was for the federal and state governments to jointly determine Calumet area "water quality standards" and set a time table for compliance with these standards.

The standard of compliance was the extremely lax set of regulations of the State of Indiana, and U.S. Steel was given three years—until December 31, 1968—to take some significant action regarding pollution.<sup>65</sup> During this grace period, the Gary Works did nothing to improve its overall effluent discharge patterns.<sup>66</sup> The

federal government then granted U.S. Steel a one year extension. In January, 1969 another Conference was held to see how matters were proceeding. At this time U.S. Steel obtained a second one year extension until December 31, 1970. In December, 1970 it "was demanding new extensions and making no pretense of intending to cooperate with the original requirements."<sup>67</sup> No enforcement action was taken by the federal authorities under the Water Pollution Control Act.

## 2. *The 1899 Rivers and Harbors Act*

Faced with the rising national clamor about water pollution, the Justice Department filed a criminal suit against the Gary Works in February of 1970 under the 1899 Rivers and Harbors Act.<sup>68</sup>

Unlike the complex 1972 amendments to the Federal Water Pollution Control Act, the 1899 Act simply forbids any discharge of materials into navigable rivers of the United States. It has strong enforcement provisions, including immediate injunctions and stiff fines for violators. Moreover, the Supreme Court has given the statute a very expanded interpretation. Discharging materials was held to include all unlicensed discharges of refuse except municipal sewage. This essentially meant that all industrial water pollution was illegal. The only way one could legally pollute was to obtain a permit from the Army Corps of Engineers.<sup>69</sup>

Initially, it appeared that the February, 1970 suit was a giant step forward.<sup>70</sup> On June 8, 1972, the Corporation was found guilty and fined \$5,000.<sup>71</sup> It is worth noting that the amount of the fine was clearly far less than the cost of pollution control equipment to prevent the discharge; and that over four years had elapsed between the alleged offense and conviction. Even more significantly, the indictment was not based upon U.S. Steel's continual and massive water pollution. It was simply that on one specific day, October 11, 1967, discharges from two sewers opening into the Grand Calumet had occurred: one pipe discharging "a significant quantity of a red-brown substance," and the other "an oily substance."<sup>72</sup>

This narrowly drawn indictment presaged a determined — and successful — effort by the Nixon Administration to prevent the 1899 Act from being utilized to halt water pollution. It was clear that the Administration considered the law too powerful a weapon against polluters; and steps were rapidly taken to emasculate it.<sup>73</sup> During the period when the Gary Works case was initiated, a large number of United States District Attorneys were commencing actions under the promising 1899 Act, and it seemed likely to revolutionize water

pollution enforcement.<sup>74</sup>

On June 13, 1970, then Attorney General John Mitchell sent all U.S. District Attorneys a set of enforcement guidelines for the 1899 Act.<sup>75</sup> These guidelines essentially generalized the Gary precedent. District Attorneys were told not to prosecute any industry causing pollution "of a continuing nature;" only exceptional discharges — such as accidental oil spills not attendant to regular production—were to be subject to enforcement under the 1899 law. The regular discharge of industrial effluents was only to be attacked via the Water Pollution Control Act.<sup>76</sup>

This peculiar set of guidelines was greeted by a storm of protests by environmentalists.<sup>77</sup> The Justice Department's alleged reason was that any other course of action would interfere with the requirements of the Water Pollution Control Act. Eventually, the opposition to these guidelines became so intense that they were rescinded, although the second set was also quite restrictive.<sup>78</sup> Under this second set of guidelines promulgated on February 4, 1971, District Attorneys were not to initiate suits on their own, but were to wait for referrals from the Environmental Protection Agency.<sup>79</sup> Apparently, there was substantial internal opposition by various U.S. District Attorneys to this requirement and on one occasion it was necessary to fire a District Attorney who insisted on being overly zealous in his efforts to stop pollution.<sup>80</sup>

In February, 1971, the U.S. District Attorney filed a civil suit against the Gary Works under the 1899 Act, charging the Corporation with a pattern of continuing discharges of iron, oil, ammonia, and solids. This case has not yet come to trial,<sup>81</sup> and there is reason to anticipate that it never will. First, this case was one of a group of 38 cases simultaneously initiated by the Justice Department, most of which were settled out of court.<sup>82</sup> The only one of the group, a case against Armco Steel, which did come to trial resulted in a sweeping court order against Armco which was ordered to undertake major capital improvements to remedy its water pollution.<sup>83</sup> But the initial court decision of September, 1971, was later modified by a consent decree. (There have been charges made in Congress that political interference at the highest Administration level resulted in a capitulation to the steel company; these charges have been denied, but the relevant documents have not been made available by the Administration to its Congressional critics.)<sup>84</sup>

On December 23, 1970, President Nixon reactivated the 1899 Refuse Act by ordering the Army Corps of Engineers to begin implementing the heretofore unenforced section of the 1899 Act requiring

all industries discharging into the nation's waters to obtain a permit.<sup>85</sup> Under the regulations issued by the Corps in July, 1971, the application had to be approved by both the appropriate state pollution control agency and the Environmental Protection Agency. If both bodies approved the Corps would issue a five year permit.<sup>86</sup>

Unfortunately, this set of procedures virtually made a dead letter of the 1899 Act. The basis for state approval of the permit application is the existing "water quality standards" under the Water Pollution Control Act.<sup>87</sup> (Thus for the Gary Works, it is the inadequate standards of the Indiana Stream Pollution Control Board.)<sup>88</sup> Then Director William Ruckelshaus admitted that EPA approval would be a formality; that ordinarily his agency would simply follow the state guidelines.<sup>89</sup> The effect was to radically increase the amount of paperwork and forms, while making the actual change in the real world of sewer discharges less likely.<sup>90</sup>

At first, U.S. Steel decided not to abide by the permit program requirements. Although it submitted an application in time for the July, 1971 deadline, it refused to sign the certification to it in keeping with its overall strategy of maximum delay.<sup>91</sup> However, in October U.S. Steel changed its mind and agreed to sign its application. Apparently, the Corporation had failed to get the other major steel companies to join it in a court challenge of the law; it also had made itself the target of EPA demands on the Justice Department to proceed with the Gary Works suit pending against it.<sup>92</sup>

However, the permit program soon began to collapse under its own weight as it proved impossible to adequately review the 40,000 applications which had been filed. (U.S. Steel's application for the Gary Works alone was over 500 pages.)<sup>93</sup> Few of the applications were granted; but while they were pending, legal action against industrial polluters was also held in abeyance.<sup>94</sup>

### *3. The Federal Water Pollution Control Act Amendments of 1972*

Under the 1972 Amendments to the Federal Water Pollution Control Act, the existing permit applications under the 1899 Act are automatically transferred and become applications for permits under the new law.<sup>95</sup> Not only do the practical problems of processing the permit application remain, but anyone who applied for such a permit is immune from prosecution under the new law until these applications are processed.<sup>96</sup> This transitional problem, however, is not the core of the difficulty with the new law,<sup>97</sup> rather it is its administrative complexity. The 1972 Act sets three different sets of effluent standards: "best practicable control technology currently

available" (1977); "best available technology economically achievable" (1983); and separate provisions for new plants. There is a set of criteria for the Environmental Protection Agency to utilize in setting these standards,<sup>98</sup> but these criteria are so diverse that the EPA is really delegated essentially arbitrary powers in its decision-making.<sup>99</sup>

These standards are to be translated into a series of regulations determining discharge levels for different industry groups. (These regulations are currently being issued.) Individual permits are to be granted or denied depending upon whether they measure up to these regulations.<sup>100</sup>

Finally, the granting of permits can be turned over to the states, if they develop an adequate set of guidelines themselves.<sup>101</sup> However, the EPA guidelines for determining whether a state program is adequate are untested and highly complex—leading to further uncertainties.<sup>102</sup>

Rather than guaranteeing rapid progress on the water pollution front, recent legal and administrative developments seem to have had the effect of adding additional complexities which can readily be turned into opportunities for political maneuvering and procedural delay by determined industrial polluters. In any event, in the short run, U.S. Steel has avoided being placed in a position where it must engage in massive changes in its production processes.

### III. STRATEGY OF UNITED STATES STEEL

Strategically, the aim of the U.S. Steel Corporation has been to resist making substantial investments—either in new capital or in operating costs—for pollution control measures.<sup>103</sup> For the Gary Works alone, it is possible that expenditures of several hundred million dollars would be necessary to reduce water pollution to current statutory levels.<sup>104</sup> By postponing these expenditures for a decade or more (instead of voluntarily complying with the aims of the existing environmental laws), the Corporation has made substantial sums of capital available for other, profitable, investments. Yet, it is interesting to note that in 1969 the Secretary of the Interior awarded Edgar Speer, the President of U.S. Steel, with a "special clean water award."<sup>105</sup>

On the other hand, the need for some controls over the environment has become clear to both the federal government and to business leaders. So the problem, particularly for industries such as steel, which are not terribly profitable and which face high costs for pollution control equipment, is how to avoid paying for amelioration

of the problem out of their own profits. The answer is to pass the cost on to the American people.<sup>106</sup>

To the extent that the tax laws are changed to "provide incentives" for private industry to install pollution control equipment,<sup>107</sup> what is actually happening is that the population at large is providing a subsidy to the enterprise for this installation.<sup>108</sup> In the late 1960's when it became obvious that substantial expenditures for environmental protection would eventually have to be made, U.S. Steel and other major polluters successfully campaigned to shift a large part of the cost from the stockholders to the public generally.

Thus, in the past few years the following measures have been adopted:

1. The federal government amended Section 169 of the Internal Revenue Code to provide for rapid depreciation (i.e. five years) of pollution control equipment. The steel industry was a prime mover behind this amendment.<sup>109</sup>

2. Despite the objections of the Department of the Treasury, Section 103(c) of the Internal Revenue Code permits pollution control investments to be covered by the floating of special tax exempt industrial development bonds. This appreciably reduces the interest rates, and hence the net costs, of the capital involved. Sales of these bonds have already surpassed \$1 billion a year. In these cases the issuing corporation can also deduct depreciation and investment tax credits as if it owned the facilities outright, even though title is vested in the issuing municipality.<sup>110</sup> Through these and similar tax devices, between 1969 and 1971 U.S. Steel in all probability paid no federal taxes.<sup>111</sup>

In addition, state governments (forced to compete against each other for industry) have matched this federal largesse. Indiana abolished all taxes, including local property taxes, on expenditures made for pollution control equipment.<sup>112</sup> In Indiana, the determination of what facilities qualify is vested in the Indiana Stream Pollution Control Board,<sup>113</sup> and Indiana's Attorney General has instructed the Board to interpret this statute with extreme liberality.<sup>114</sup> Once such a facility has been so certified, the Township Assessor determines how much value can be deducted from the local tax bill.<sup>115</sup> In Gary, this official has long had an amicable relationship with U.S. Steel.<sup>116</sup>

#### CONCLUSION

In contrast to the vast resources available to U.S. Steel, local and state governments are virtually impotent.<sup>117</sup> The experiences of the

City of Gary in attempting to control the Corporation under the reform administration of Mayor Richard Hatcher amply bear out this conclusion, and the federal government seems unwilling to bring its power to bear. The outcome is that U.S. Steel has not been brought to heel; it continues to ride roughshod over the public interest as it has since its birth at the turn of the century.



#### FOOTNOTES

\*Associate Professor of Political Science, Hampshire College. Copyright by the author, 1973.

<sup>1</sup>This article is a section from Greer, E., *BIG STEEL, LITTLE STEAL: LIMITS OF BLACK REFORM IN GARY, INDIANA* (New York: Monthly Review Press, forthcoming).

<sup>2</sup>See, Nelson, W.E., Jr., *BLACK POLITICS IN GARY: PROBLEMS AND PROSPECTS* (Washington: Joint Center for Political Studies, 1972); Greer, E., *The 'Liberation' of Gary, Indiana*, *TRANS-ACTION* (January, 1971), at 30-9; Poinsett, A., *BLACK POWER GARY STYLE: THE MAKING OF MAYOR RICHARD GORDON HATCHER* (Chicago: Johnson Publishing Co. Inc., 1970); Moore, A., *THE CALUMET REGION: INDIANA'S LAST FRONTIER* (Indianapolis: Indiana Historical Bureau, 1959).

<sup>3</sup>Parallel difficulties have been encountered in the enforcement of the Clean Air Amendments of 1970, see, Greer, E., *Limits of Black Mayoral Reform in Gary: Air Pollution and Corporate Power*, (Paper presented at 1973 American Political Science Association Convention).

<sup>4</sup>Moore, *supra* n. 2, at 104-9, see also Becker, S., *MARSHALL FIELD III: A BIOGRAPHY*, at 64 (New York, Simon & Schuster, Inc., 1964).

<sup>5</sup>Mohl, R.A., and N. Betten, *The Failure of Industrial City Planning: Gary, Indiana, 1905-1910*, *JOURNAL OF THE AMERICAN INSTITUTE OF PLANNERS*, at 203-14 (July, 1972). No one but Gary and his friends was consulted prior to the decimation of the heretofore aesthetic Gary environment. From his share of the profits, Judge Gary was able over the next two decades to assemble a magnificent art collection. When auctioned off in 1928, after his death, to a crowd which *The New York Times* (April 28, 1928) described as including "scores of persons prominent socially and financially," the collection brought the highest price ever for an American art sale. Ironically, among the items auctioned off was Jean Baptiste Corot's masterpiece, *Souvenir des Bords du Lac de Garde*. The catalog described the painting as follows: "The high bank in the left foreground is

crowned with willows and saplings . . . A traveler . . . stands under the trees looking out over the untroubled water." American Art Association, *THE GARY COLLECTION: COLLECTION OF THE ESTATE OF THE LATE JUDGE ELBERT H. GARY*, Vol. I. Notable Paintings by Masters . . . (New York: private printing, 1928).

<sup>6</sup>Moore, *supra* n. 2, at 102; Quillen, I.J., *INDUSTRIAL CITY: A HISTORY OF GARY, INDIANA TO 1929*, at 52-3, (Yale U. 1942).

<sup>7</sup>Transcript, *United States v. United States Steel Corporation*, 70 Hammond 12 (Oct. 6-11, 1971), at 231-4, (testimony of Peter Madinis, Civil Engineer, U.S. Army Corps of Engineers); and at 187-8, (testimony of Warren Reeder, a local historian).

<sup>8</sup>The remainder enters the Mississippi River system via the Calumet River in Illinois. U.S. Dept. of Health, Education and Welfare (HEW), *Conference in the Matter of Pollution of the Interstate Waters of the Grand Calumet River, Little Calumet River, Wolf Lake, Lake Michigan and their Tributaries*, Vol. 4 at 1189-90, (March 2-9, 1965).

<sup>9</sup>Moore, *supra* n. 2, at 102.

<sup>10</sup>Fochtman, e.g., *Lake Michigan — Can it Survive?*, *FRONTIER*, 30:1:5-6 (Winter, 1970); *SCIENTIFIC AMERICAN*, 215:5:91-104 (Nov. 1966); Hines, N.W., *Controlling Industrial Water Pollution: Color the Problem Green*, 1 *ENVIRONMENTAL LAW REVIEW* 285 (1970).

<sup>11</sup>Zwick, D., *Water Pollution*, *NIXON AND THE ENVIRONMENT: THE POLITICS OF DEVASTATION*, at 30-1, J. Rathlesberger (ed.) (Village Voice/Taurus Communications 1972); Commoner, B., *THE CLOSING CIRCLE: NATURE, MAN AND TECHNOLOGY*, at 128, 143, 166, (Knopf 1971).

<sup>12</sup>U.S. Environmental Protection Agency, *A PROGRESS REPORT*, at 11, (G.P.O. 1972).

<sup>13</sup>U.S. Dept. of the Interior, *Clean Water for the 1970's, The Pollution Crisis*, *OFFICIAL DOCUMENTS*, at 35, Rabin, E.D. and M.D. Schwartz (eds.), (Dobbs Ferry: Oceana Publications, Inc. 1972) (hereinafter referred to as *Clean Water*); Weisberg, B., *BEYOND REPAIR: THE ECOLOGY OF CAPITALISM*, at 10 (Beacon Press 1971).

<sup>14</sup>Rodgers, W.H. Jr., *Industrial Water Pollution and the Refuse Act: A Second Chance for Water Quality*, 119 *PA. L. REV.* 764-5, (Apr. 1971); White, G.F., *Industrial Water Use: A Review*, *THE GEOGRAPHICAL REVIEW*, 50:3:414, (July, 1960).

<sup>15</sup>*Clean Water*, *supra* n. 13; Vantresca, M., *The Politics of Pollution Control*, 5 *SUFFOLK L. REV.* 1029, (Spring, 1971); *ENVIR. SCI. AND TECH.*, 5:10:1004, (Oct. 1971).

These four groups use 85% of all the water utilized in manufacturing. Rodgers, *supra* n. 14, at 765.



<sup>16</sup>E.P.A., *supra* n. 12, at 22.

<sup>17</sup>ENVIRONMENTAL STEEL, ECONOMIC PRIORITIES REPORT, 4:2:3, 17 (May, 1973).

<sup>18</sup>Hines, *supra* n. 10, at 17-20.

<sup>19</sup>The pulp and paper industry is several years ahead of steel in water pollution control measures. *Paper Profits: Pollution Audit 1972*, ECONOMIC PRIORITIES REPORT, 3:3:2 (July/August 1972).

<sup>20</sup>President's Council on Environmental Quality, ANNUAL REPORT 1972); Freeman, A. III and H. Haveman, *Clean Rhetoric and Dirty Water*, THE PUBLIC INTEREST, at 51, (Summer, 1972).

<sup>21</sup>ENVIRONMENTAL STEEL, *supra* n. 17, at 16.

<sup>22</sup>ENVIRONMENT 15:1:35, (January/February 1973).

<sup>23</sup>Zwick, D. and M. Benstock, WATER WASTELAND: RALPH NADER'S STUDY GROUP REPORT ON WATER POLLUTION, at 223, (New York: Grossman Publishers, 1971).

<sup>24</sup>Council on Economic Priorities, ENVIRONMENTAL STEEL (draft) at 428. The composition of this discharge is inventoried at 435-6; Walling F.R. and L.C. Otis, Jr., *Water Requirements of the Iron and Steel Industry*, WATER SUPPLY PAPER 1330-H, (Washington: Government Printing Office, 1967).

<sup>25</sup>Dept. of H.E.W. *supra* n. 8, Vol. I at 103.

<sup>26</sup>*Id.* at 104, 126; Commoner, *supra* n. 11, at 35-6.

<sup>27</sup>ENVIRONMENTAL STEEL, *supra* n. 17, at 11; Interview with Dr. Herschel Bornstein, Gary Health Commissioner (June 8, 1971). One test indicated a cyanide level 12 times the Public Health Service's mandatory limit. Letter from Perry E. Miller, Technical Secretary, Indiana Stream Pollution Control Board to Dr. Herschel Bornstein (February 9, 1971); Todd, D.K., THE WATER ENCYCLOPEDIA, at 319, (Port Washington: Water Information Center, 1970); *Cf.*, Zwick and Benstock, *supra* n. 23, at 219.

<sup>28</sup>Dept. of H.E.W., *supra* n. 8, Vol. I at 103.

<sup>29</sup>*Id.*, at 45-50, 112.

<sup>30</sup>*Id.*, at 79-80; U.S. Dept. of H.E.W., PROCEEDINGS, Vol. I at 58, 150-60; U.S. Dept. of H.E.W., WATER QUALITY IN THE CALUMET AREA, at 22, (1970); Indiana Stream Pollution Control Board, INDIANA WATER QUALITY: 1968, at 36; Indiana Stream Pollution Control Board, INDIANA WATER QUALITY: 1969, at 36; Letter to Dr. Herschel Bornstein from Perry Miller (Feb. 9, 1971).

<sup>31</sup>GARY POST-TRIBUNE, Jan. 18, 1972.

<sup>32</sup>Council on Economic Priorities, *supra* n. 24, at 435-6.

<sup>33</sup>ENVIRONMENTAL STEEL, *supra* n. 17, at 11; N.Y. TIMES Oct. 8, 1972; WATER QUALITY IN THE CALUMET AREA, *supra* n. 30, at 36.

<sup>34</sup>GARY POST TRIBUNE, Nov. 13-4, 1971.

<sup>35</sup>Dept. of H.E.W., *supra* n. 8, Vol. I, at 44-5.

<sup>36</sup>Greer, *supra* n. 3.

<sup>37</sup>Dept. of H.E.W., *supra* n. 8, Vol. 4, at 1333-4.

<sup>38</sup>*Id.*, Vol. I, at 92-5; ENVIRONMENT, 15:3:11-9 (April, 1973).

<sup>39</sup>For instance, then Mayor A. Martin Katz did not mention the problem of Gary Works' effluents in his testimony at the first federal Conference on Lake Michigan water pollution. Dept. of H.E.W. *supra* n. 8, Vol. 3 at 909-26; *Cf.*, Crenson, M.A., THE UN-POLITICS OF AIR POLLUTION (Baltimore: The Johns Hopkins Press, 1971).

<sup>40</sup>Hatcher, R.G., PLATFORM: PROGRESS TODAY, NOT PROMISES TOMORROW, at 3-4, (1967).

<sup>41</sup>*Cf.*, The contemporaneous comments of the Mayor of Youngstown, Ohio: "What do we care about the [Mahoning] River as long as it brings the barges down, the iron and coal into the steel mills? . . . I don't care what kind of treatment they have." ENVIRONMENTAL STEEL, *supra* n. 17, at 30.

<sup>42</sup>WALL STREET J., June, 1973; Hall, G., STEEL AND METAL WORKERS: IT TAKES A FIGHT TO WIN, at 39 (New York: New Outlook Publishers, 1972).

<sup>43</sup>MARXISM TODAY, 17:4:103-11 (April, 1973); England, R. and B. Bluestone, *Ecology and Class Conflict*, 3 THE REVIEW OF RADICAL POLITICAL ECONOMICS, 31-55 (Fall/Winter, 1971). The Environmental Protection Agency puts it more delicately, suggesting that it is "likely" that the costs of pollution control will be "passed on to consumers." E.P.A., *supra* n. 12, at 24.

<sup>44</sup>Letter from Perry Miller to Dr. Herschel Bornstein (February 9, 1971).

<sup>45</sup>ENVIRONMENTAL STEEL, *supra* n. 17, at 31; Greer, *supra* n. 3; *see, also* n. 49, *infra*.

<sup>46</sup>1960 Municipal Code of Gary, §§ 8-703; GARY POST TRIBUNE, June 24, 1971.

<sup>47</sup>Hatcher, R.G., *Straight Ahead Together Platform*, GARY CITIZEN, 2:3:3, (April 27, 1971).

<sup>48</sup>Greer, *supra* n. 1.

<sup>49</sup>BURNS IND. STAT. ANN. §§ 68.517-43 (Supp. 1972).

This statute was drafted by William D. Ruckelshaus, former administrator of the E.P.A. and Deputy Attorney General while he was with the Indiana Attorney General's Office. N.Y. TIMES, Aug. 6, 1972. The Indiana statute is relatively weak however, compare for example, DEL. CODE 7-7001 *et seq.* which bans the construction of new steel mills along the coast. *See, also*, ENVIR. SCI. AND TECH., 7:7:581-2, (July, 1973).

<sup>50</sup>N.Y. TIMES, December 3, 1972; Davies, J.C. IV, *THE POLITICS OF POLLUTION*, at 122-3, (New York: Western Publishing Company, Ind., 1970); Freeman, A.M. III, *THE ECONOMICS OF POLLUTION CONTROL AND ENVIRONMENTAL QUALITY*, at 20, (New York: General Learning Press, 1971).

A representative of a major steel company has always been a member of the Board. And, as the Environmental Protection Agency puts it: "There is a repeated correlation between persistent pollution and pollution linked control boards." E.P.A. *supra* n. 12, at 84.

<sup>51</sup>Prior to the 1965 law, the Board was entirely quiescent. Dept. of H.E.W. *supra* n. 8, Vol. 3 at 606-23; Davies, *supra* n. 50, at 142-3.

<sup>52</sup>The official in charge of Gary Works pollution control put it this way: "In the recent years, the . . . Board has intensified its program to have water treatment facilities installed at all industrial locations. . . [We have] accepted the program of the Indiana Board in the spirit in which it has been formulated. We believe that they are qualified by knowledge and experience of industrial practices in their State to see that this program is carried to its logical conclusion." Dept. of H.E.W., *supra* n. 8, vol. 4 at 1253.

<sup>53</sup>Davies, *supra* n. 50, at 44; State of Indiana, Stream Pollution Control Board, *Regulations SPC 8, Grand Calumet River* (effective date: June 13, 1967).

Under pressure from the federal authorities on July 20, 1970 more stringent regulations (including limits on iron and cyanide) were promulgated; they were approved by the E.P.A. on January 20, 1971, E.P.A. *supra* n. 12, at 13,75.

<sup>54</sup>Final Order and Determination of the Stream Pollution Control Board of the State of Indiana, in the Matter of the Stream Pollution Control Board of the State of Indiana v. U.S. Steel Corporation Gary Works, Gary, Indiana, Cause No. B-82.

<sup>55</sup>"The record of the administrative proceedings below lacks substantial probative evidence to support the order [of the Board] . . . . The Findings of the Board are not stated with sufficient specificity to enable this court to review them intelligibly." United States Steel Corporation v. Indiana Stream Pollution Control Board. (Lake County Superior Court, 1971), Cause No. 570-1212. See N.Y. TIMES, January 24, 1971.

<sup>56</sup>United States Steel Corporation v. Air Pollution Appeal Board of the City of Gary, Indiana (Lake County Superior Court, 1971), Cause No. 571-585.

<sup>57</sup>Transcript, U.S. Steel Corp. v. Ind. Stream Pollution Control Bd., at 63, (April 27, 1971), Cause No. 570-1212.

<sup>58</sup>Council on Economic Priorities, *supra* n. 24, at 433.

<sup>59</sup>33 U.S.C.A. §1251 *et seq.* (Supp. 1973). See, McMahon, M.J.Jr., *The Federal Water Pollution Control Act Amendments of 1972*, 14 B.C. IND. AND COMM. L. REV. 674 (April, 1973).

<sup>60</sup>33 U.S.C. §407.

<sup>61</sup>See, *Clearing Muddy Waters: The Evolving Federalization of Water Pollution Control*, 60 GEO. L.J. 745-50, (Feb. 1972) (Herein-after referred to as *Muddy Waters*).

<sup>62</sup>Water quality standards establish the acceptable levels of pollutants in the body of water into which polluting discharges are being made. On the basis of water quality standard maintenance, the individual effluents of the discharges were regulated under the 1965 and 1970 amendments. However, in effect, it became nearly impossible to equitably determine which effluents were polluting a body of water in excess of the water quality standards.

<sup>63</sup>*Muddy Waters*, *supra* n. 61, at 750-1.

<sup>64</sup>*Id.*, at 753-4; ENVIR. SCI. AND TECH., 5:10: 994-5, (Oct. 1971).

<sup>65</sup>Zwick and Benstock, *supra* n. 23, at 219.

<sup>66</sup>Council on Economic Priorities, *supra* n. 24, at 432.

<sup>67</sup>Zwick and Benstock, *supra* n. 23, at 223. Such extensions have been common with regard to large industrial polluters. See, Rodgers, *supra* n. 14, at 801-3.

<sup>68</sup>WALL STREET J., Feb. 22, 1970.

<sup>69</sup>*Muddy Waters*, *supra* n. 61, at 757-8; U.S. v. Interlake Steel Corp., 384 U.S. 224 (1966).

<sup>70</sup>This was the first such prosecution in the Midwest. GARY POST TRIBUNE, Oct. 12, 1971.

<sup>71</sup>Council on Economic Priorities, *supra* n. 24, at 433.

<sup>72</sup>Transcript, *supra* n. 57, at 65.

<sup>73</sup>Zwick, *supra* n. 11, at 39; Rodgers, *supra* n. 14, at 792-806; Freeman and Haveman, *supra* n. 20, at 57-8.

<sup>74</sup>During the first six months of 1970 (when the Gary Works case was brought) the Justice Department had tripled the number of cases over the previous year. ENVIR. SCI. AND TECH., 5:10:994-5, (Oct. 1971).

<sup>75</sup>1 ELR 228, (July 17, 1970).

<sup>76</sup>The impact of these guidelines was to assure that: "the industrial polluter who is operating under the blessing of a state permit, or who is being pursued in a state prosecution or who has fallen under the watchful eye of a conference proceeding presided over by

the FWQA was no longer to be fair game for the United States Attorney." Rodgers, *supra* n. 14, at 792-806.

<sup>77</sup>SCIENCE, 171:3968:267.

<sup>78</sup>1 ELR 1099 (Feb. 12, 1971); Rodgers, *supra* n. 14, at 792-806.

<sup>79</sup>Note — *The Refuse Act: Its Role Within the Scheme of Federal Water Quality Legislation*, 46 N.Y.U. L. REV. 308 (April, 1971).

<sup>80</sup>WALL STREET J., Jan. 11 and June 4, 1971; Rodgers, *supra* n. 14, at 796.

<sup>81</sup>U.S. v. U.S. Steel Corp., Civil No. 71-H52 (D.C. Hammond, Ind., Feb., 1971); Council on Economic Priorities, *supra* n. 24 at 434.

<sup>82</sup>N.Y. TIMES, April 9, 1972.

<sup>83</sup>BUSINESS WEEK, Oct. 9, 1971, at 64-5.

<sup>84</sup>N.Y. TIMES, Nov. 23, 1972.

<sup>85</sup>33 C.F.R. 188 (1970).

<sup>86</sup>33 C.F.R. 209.131 (1972).

<sup>87</sup>The Refuse Act, *supra* n. 79, at 337-40.

<sup>88</sup>See, note 53, *supra*.

<sup>89</sup>The Refuse Act, *supra* n. 79, at 337-40.

<sup>90</sup>Freeman and Haveman, *supra* n. 20, at 58.

<sup>91</sup>N.Y. TIMES, Sept. 26, 1971; ENVIRONMENTAL ACTION BULLETIN, at 2, Dec. 4, 1971.

<sup>92</sup>BUSINESS WEEK, at 64-5, (Oct. 9, 1971).

<sup>93</sup>McMahon, *supra* n. 59, at 697-8.

<sup>94</sup>Interview between the author and James Cannon of the Council on Economic Priorities (Oct. 5, 1973).

<sup>95</sup>33 U.S.C. A. §§ 1342-5 (Supp. 1973).

<sup>96</sup>Lipman, J.M., *The Federal Water Pollution Control Act Amendments of 1972: Effective Controls at Last?*, 39 BROOKLYN L. REV. 424, (Summer 1972); Rodgers, *supra* n. 14, at 816-17.

<sup>97</sup>For a review of the legislative history of the Act, see Rauch, R.J., *The Federal Water Pollution Control Act, Amendments of 1972: Ambiguity as a Control Device*, 10 HAR. J. ON LEGISLATION 565-71 (June, 1973).

<sup>98</sup>*Id.*; ENVIR. SCI. AND TECH., 7:10:795, (Oct. 1973); McMahon, *supra* n. 59.

<sup>99</sup>See, Reich, C., *The New Property*, 73 YALE L. J. 733-87, (April, 1964).

<sup>100</sup>See, note 98, *supra*.

<sup>101</sup>McMahon, *supra* n. 59, at 711-22; ENVIR. SCI. AND TECH., 7:9:786-92, (Sept. 1973).

<sup>102</sup>37 Fed. Reg. 28390-402 (1972).

<sup>103</sup>"For the individual company, the need to spend money to pre-

vent pollution is, clearly, a net out of pocket cost with little, if any visible return on the investment." Manufacturers Hanover Trust, *ECONOMIC REPORT*, at 3, (Feb. 1973).

<sup>104</sup>Cost estimates vary widely. See, Tihansky, *A COST ANALYSIS OF WASTE MANAGEMENT IN THE STEEL INDUSTRY*, (The Rand Corp. 1972); C.E.Q., Dept. of Commerce, and E.P.A., *THE ECONOMIC IMPACT OF POLLUTION CONTROL; A SUMMARY OF RECENT STUDIES*, (G.P.O. 1972).

<sup>105</sup>Ridgeway, J., *THE POLITICS OF ECOLOGY*, at 162 (E.P. Dutton and Co. 1971).

<sup>106</sup>As one of Bethlehem Steel's tax attorneys put it: "the sharing of the costs of these unproductive facilities with the government is appropriate in each case." Williams, D.O., *Discussion — Environmental Taxation and Management*, *PROCEEDINGS OF THE SIXTY FOURTH ANNUAL CONFERENCE ON TAXATION: 1971*, at 44. (Columbus: National Tax Association, 1972).

<sup>107</sup>*ENVIR. SCI. AND TECH.*, 5:8:622 (Aug. 1971); Federation of Tax Administrators, *STATE PREFERENTIAL TAX TREATMENT FOR POLLUTION CONTROL FACILITIES*, REPORT. NO. 61 (January, 1971).

<sup>108</sup>McDaniel, P.R. and A.S. Kaplinsky, *The Use of the Federal Income Tax System to Combat Air and Water Pollution: A Case Study in Tax Expenditures*, *ENVIRONMENTAL AFFAIRS*, 1:1:3-55 (April, 1971).

<sup>109</sup>The Treasury Department estimates that Section 169 will cost as much as \$120 million in lost revenues annually. (Earlier, in 1966, the industry successfully helped lobby to exempt pollution control equipment from the suspension of the 7% investment tax.) *Id.*, at 93. Grundy, R.D., *Legislative and Regulatory Trends Regarding Air Pollution Control and Prevention*, in R.D. Ross (ed.), *AIR POLLUTION AND INDUSTRY*, at 222, (New York, Van Nostrand and Reinhold Company, 1972).

Other advanced capitalist countries have passed similar legislation. *ENVIR. SCI. AND TECH.*, 7:6:498-9, (June, 1973).

<sup>110</sup>Testimony of Martin J. Bailey, Deputy Assistant Secretary of the Treasury for Tax Policy before the Subcommittee on Environment, Senate Committee on Commerce, (July 26, 1973); *Notes—The Limited Tax-exempt Status of Interest on Industrial Development Bonds Under Subsection 103(c) of the Internal Revenue Code*, 85 *HAR. L. REV.* 1649-68, June 1972); *N.Y. TIMES*, October 22, 1972; Stieber, W.J. and H. Faulk, *Property Tax Exemption: An Inefficient Subsidy to Industry*, *NATIONAL TAX J.*, at 386-94, (December 1967).

The Advisory Committee on Intergovernmental Relations con-

cludes that industrial development bonds tend "to impair tax equities, competitive business relationships and conventional financing institutions out of proportion to [their] contribution to economic development and employment." INDUSTRIAL DEVELOPMENT BOND FINANCING, at 5, Report A-18 (August, 1965).

<sup>111</sup>Vanik, C.A., *Corporate Federal Tax Payments and Federal Subsidies to Corporations, Hearings Before the Joint Economic Committee*, Congress of the United States, 92nd Cong., 2d Sess. (July 1972).

<sup>112</sup>BURNS IND. STAT. ANN. 6-1-8 § 1-4 (Code Ed.) and 6-1-9 § 1-2 (Code Ed.) (air pollution).

<sup>113</sup>This law was passed while William Ruckelshaus was majority leader of the Indiana House of Representatives, N.Y. TIMES, April 28, 1973.

<sup>114</sup>ANNUAL REPORT AND OFFICIAL OPINIONS OF THE ATTORNEY GENERAL OF INDIANA: 1969, Official Opinion No. 39, at 120-1, (December 2, 1969).

<sup>115</sup>See, n. 112, *supra*.

<sup>116</sup>HARPER'S, at 102-11, (Nov. 1972).

<sup>117</sup>This is clearly the case with respect to the legal and other resources devoted to environmental matters. *Quality Control of Air and Water—A Continuing U.S. Steel Concern*, U.S. STEEL NEWS, 31:7:8 (October/November, 1966).