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Carl Blair Housley

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WATER POLLUTION AND POLITICAL ECONOMY

*By Carl Blair Housley**

While single manufacturing plants are dumping millions of gallons of contaminated water into streams and lakes daily, a deluge of complaints of malodorous conditions, fish kills, and other damages are simultaneously being registered to government officials who possess little authority to assist injured citizens. Of those agencies being contacted, the Federal Water Quality Office (WQO)¹ is the most potent of some thirty agencies based in Washington, D.C., all of which share the avowed goal of abatement of impure discharges into the nation's waters. WQO officers have chosen to impose uniform water quality standards upon all states and to enforce compliance of polluters when rules are violated. In anticipation of legal action, water treatment plants have been installed at selected private sites and municipal water works. Government grants to partially defray building costs, in addition, are available to city officials who desire to construct purification facilities for sewage treatment.

Although water pollution legislation dates back to the Refuse Act of 1899, determined efforts to reduce the flow of impurities into streams were not considered to be threatening by industrial violators until the early sixties. In the past, most of us did not question the correctness of the idea that malodorous conditions meant larger local payrolls. Further, we were certain that water was not scarce, and we believed that industrial managers would close their plants and move elsewhere if an attempt were made to enforce purification. Now, however, the explanation that polluted streams are accompanied by gainful jobs is no longer sufficient. The enforcement of ambient and effluent water quality standards has not caused industrial relocations in large numbers.

Economists point out that water is indeed a valuable resource

due to its increasing scarcity. Furthermore, they explain that it is irrelevant to defend polluting activity on the basis of employment generated because an equal or greater amount of jobs might become available if the contamination of waters were stopped. It is the sale of goods which creates work, not the disposal of waste products. In fact, by depositing deleterious substances into streams, lakes, or aquifers, polluters often create *external diseconomies*, which are social costs borne by persons other than the damaging party. These social costs are an example of the failure of the market system to function properly. There is no mechanism, short of a system of direct enforced compensation, which will correct this situation in which one individual absorbs costs created by another. In other words, in the absence of legal requirements that enforce lower levels of discharges, the damaging party will not be bound to abate his outflow of wastes unless he is influenced by his downstream neighbor. In lieu of a bargain² involving a mutually beneficial trade of goods, services, or money for less pollution there would be no means of achieving the desired end. Legislation sufficiently powerful to enjoin the polluter would be necessary for successful abatement. But as previously implied, statutes such as the Refuse Act may be ignored unless strictly enforced.

An industrial manager who makes a decision to move his plant to avoid pollution standards is either a financial expert, an impulsive mover, or uninformed. Although water quality standards will be relatively uniform from state to state, cost differences will remain which can be detected by an alert analyst. Moreover, these divergencies could be sufficiently great to justify transferring the plant. In most cases no move to avoid abatement enforcement could be justified in financial terms.

Much of the testimony before the Committee on Public Works during the last few years provides strong evidence that statements made were based on personal interest rather than compelling economic logic. Changes in federal law reflect pressures from state and local officials and industrialists who wanted larger federal hand-outs accompanied by less federal control. Conservationist groups agreed that construction grants should be increased, but they strongly urged that the federal government accelerate enforcement action.³ The pristine purity which many conservationists desire is not technically feasible at present; further, federal subsidies usually lead to a misallocation of resources. The latter consideration is crucial in that it deals with the placement of productive factors.

When resources (factors of production) are misdirected, the output or product of the economy falls short of the maximum amount producible. If misallocation, or the employment of human or non-human resources in inappropriate work, increased, real national income would decline. As income falls, unemployment usually increases and a depression or recession occurs. Under ideal conditions, a better allocation of factors would result if the market economy were allowed to function without intervention. External diseconomies, however, provide instances of misdirection of resources, the improvement of which often requires outside intervention. This does not imply that water pollution will necessarily *cause* the economy to decline. Nor is it intended to express the favorability of government controls. To the contrary, there is a strong argument for free enterprise, but in this particular case, the problem of allocation of social costs cannot be solved without an organized effort. As previously stated, the market system fails to remedy such problems of disequilibrium, and there is no incentive which leads to payment of compensation to injured persons. Consequently, any incentive must be supplied externally by legislation.

WATER QUALITY LAW

Apparently, the widespread citizen disapproval of water pollution prompted elected officials to formulate laws which at least represent a token effort to reduce the rate of discharge of wastes into public streams, lakes, and aquifers. Although college students have recently contributed to the acceleration of legal processes by protesting the degradation of environmental components, action was initiated years before this particular objection came into vogue on campus. Before World War II, government policy on a national scale was grounded on three major pieces of legislation: (1) the aforementioned Refuse Act of 1899, (2) the Public Health Service Act of 1912, and (3) the Oil Pollution Act of 1924. Recognition of the ineffectiveness of early laws and the need to abate water pollution led Congress to pass the Water Pollution Control Act of 1948. This legislation did little more than encourage persons, firms, states, and municipalities not to decrease the value of interstate streams by dumping wastes into them. Amendments to the Act in 1956 and 1961 dealt with the distribution of federal monies to individual states on the basis of poverty and population, states' rights in controlling pollution, and the duty of the Secretary

of Health, Education, and Welfare to request that the Attorney General bring suit on behalf of the United States against uncooperative polluters. In other words, funds were made available to local governments by the federal government, but federal suits could be filed only with the permission of state officials.

Although it is true that specialized agencies were established and financial aid provided for the construction of treatment plants, very little enforcement was accomplished. As previously implied, the power of the Attorney General to bring suit against polluting individuals or industries was neutralized by the provision requiring permission of the governor or other officials of the affected state as a prerequisite to legal action. Although in most cases pollution caused damage in the state in which it was discharged, state officials often hesitated to permit legal action for several reasons. First, it could be politically disastrous for a governor to allow the initiation of abatement proceedings against a powerful person or industry operating within the boundaries of his home state. Second, it was considered that avoiding enforcement action could work as an incentive attracting other water-using firms to locate within the state, thus increasing employment and tax revenues. Third, it was considered desirable to increase production in absolute terms without regard for ensuing costs or the *net* change in revenues.

Industrial managers might be willing to sacrifice minor advantages available elsewhere in order to avoid the costs of purifying their effluents. Inducements offered by local or state governments in the form of industrial pollution rights would clearly conflict with federal policies for improving the quality of the nation's waters and of increasing income and employment by promoting a better allocation of resources. Therefore, it seems that legal provisions requiring state approval prior to enforcement litigation would not be in the public interest. Moreover, the giving of federal monies to local authorities does not guarantee an improvement of water quality. Past legislation brought about no significant changes in contamination practices except in cases of municipalities in which government funds were used to construct water treatment plants.

The Water Quality Act of 1965 created the WQO and authorized the promulgation of uniform water quality standards throughout the United States.⁴ In 1966, the Clean Water Restoration Act authorized greater amounts of money for local grants, and amended the Oil Pollution Act to cover only grossly negligent or willful oil

spills.⁵ It is important to note that in 1966 authority to control polluters was moved from the Department of Health, Education, and Welfare to the Department of the Interior, the latter being an agency originally formed to regulate resources in such a way that depletion or usage would yield a maximum gain.

During concurrent years, testimony before the Committee on Public Works furnished excellent examples of the art of avoiding relevant economic issues while mentioning the 'economic' effects of federal legislation.⁶ Without properly explaining the rationale underlying their statements, speakers complained of the injustice of federally imposed quality standards while they praised federal grants and tax incentives to municipalities, states, and industry.

ROLE OF ECONOMISTS

It is apparent that such arbitrary opinions could be beneficially evaluated and policy suggestions better formulated by able economists. Specialists could identify deceptive statements and evaluate them, rather than add them to the law without proper scrutiny.⁷ For example, a competent economist would readily recognize that rigidities result from uniform standards, and, contrary to the beliefs of many witnesses, that federal grants and tax incentives are often detrimental to the economy. Nevertheless, tax incentives for the installation of pollution abatement equipment were passed in 1969.⁸ Some economists argue that the unavoidable discrimination in levies imposed by government causes a misdirection of scarce resources. This misallocation, added to the damages resulting from pollution, they believe, will lead to social costs in excess of any benefits resulting from tax exemptions.

Whereas standards impose undue economic distortions, legislation such as the Water Pollution Control Act has not arranged for other, more appropriate techniques for abatement of impure discharges. In addition, the Clean Water Restoration Act allowed the continuation of negligent contamination from oil spills without compensation. Oil spills and ineffective statutes are obviously detrimental to the economy, but too strict pollution guidelines could create costs which are greater than benefits resulting from the adoption of such policies. An appropriate alternative to those provisions would include laws formulated with substance adequate for abatement without the imposition of severe resource usage restrictions on a nationwide basis. Constraints should be loosened

and legislation strengthened if a strict system of compensation is to be practiced. The imposition of liability on the polluter in an amount equal to the burden which he is shifting to other members of society could serve as an incentive to reduce his impure effluents or to install treatment facilities, either of which would have favorable effects. The employment of this legal-economic device would result in more purification equipment where compensation is prohibitive and would lead to an intense search for efficient treatment methods. Economists have suggested that payments could be direct between defendant and plaintiff or channeled through government offices. Both schemes, if enforced, would be effective in controlling pollution, and each possesses the flexibility necessary for a relatively smooth-running economy.⁹

In addition to gathering data to support or negate their hypothetical solutions, economists should carefully explain their opposition to particular policies. The policies contained in the Clean Water Restoration Act of 1966 which protect oil producers whose spills are merely negligent,¹⁰ and the policies which advocate increased local control, should be opposed on the grounds that neither policy is commensurate with the national public interest. The effect of mixing oil with water is the same, economically and environmentally, whether intrusion occurs by accident or intentionally. Moreover, accidental dumping can be insured against, making liability for negligent acts eminently reasonable. Economists favor federal control due to the incapability of local officials to enforce abatement orders in cases of industrial pollution. The underlying reason for such a preference relates to the improved placement of scarce resources and the ensuing rise in income levels. In fact, all policy suggestions of economists, including that of compensation systems and the exposure of misconceptions, are formulated to achieve the same end. That is, the role of economic thinkers is to devise schemes which will lead to less pollution and greater prosperity. The allocation of water resources is centrally important due to the irreplaceable nature of water in the global ecosystem and in man's economy.



FOOTNOTES

* Assistant Professor of Economics, University of Southern Mississippi.

¹ At its inception in 1965, this agency was given the title Federal

Water Pollution Control Administration, later named Federal Water Quality Administration, and in 1971 became the Water Quality Office of the Environmental Protection Agency.

² For an excellent justification of this type of bargaining, see R. H. Coase, "The Problem of Social Cost," *Journal of Law and Economics*, Vol. 3 (Oct., 1960).

³ See, for instance, U.S., Congress. Committee on Public Works. *Water Pollution—1967*, Hearings, 90th Cong., 1st Session, Washington, D.C., 1967.

⁴ P. L. 89-234 (Water Quality Act of 1965) Sec. 5. Also see U.S., Department of the Interior, *Guidelines for Establishing Water Quality Standards for Interstate Waters*, Washington, D.C.: Government Printing Office, January, 1967.

⁵ P. L. 89-753 (Clean Water Restoration Act of 1966) Sec. 2, 3. The most recent version of the Federal Water Pollution Control Act, P. L. 92-500, was passed over President Nixon's veto on October 18, 1972.

⁶ U.S., Congress. Committee on Public Works. *Federal Water Pollution Control Act—1966*. Hearings, 89th Cong., 2nd Sess. Washington, D.C., 1966.

⁷ The role of economists is difficult to define and is not universally agreed upon by my colleagues. Examples of disagreements among members of the profession are contained in a debate which appeared in this journal. See R. C. d'Arge and E. K. Hunt, "Environmental Pollution, Externalities, and Conventional Economic Wisdom: A Critique," *Environmental Affairs*, Vol. 1, No. 2 (June 1971). Also see W. Brown and M. Reynolds, "d'Arge and Hunt on Externalities and Economic Orthodoxy: A Critique Appraised," *Environmental Affairs*, Vol. 1, No. 4 (March, 1972).

⁸ 26 U.S.C. §169. See P. R. McDaniel 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*, Vol. 1, No. 1 (April, 1971).

⁹ Brown and Reynolds, *supra* note 7 at 842.

¹⁰ It should be noted that such absolute liability for damage resultant from oil spills is contemplated in both versions of the 1972 Federal Water Pollution Control Act, *supra* n.5.