Vantage Point & Issue Editor, Examining the Clean Air Act Issue

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Unpolluted air is essential to our health and welfare. Broad, deep, bipartisan consensus is reflected in the central requirement of the Clean Air Act that our ambient air quality standards protect the public health with an adequate margin of safety. We have witnessed important air quality improvement since 1970, but the growth of our economy, population, and ownership and use of motor vehicles makes the task of achieving and maintaining healthy air quality and good visibility a daunting and continuing challenge, and we have not even begun to grapple with federal regulation of greenhouse gases.

Nationally, EPA's most recent air trends report showed that despite progress since 1970 in reducing emissions, we annually emit about 160 million tons of air pollutants and about 146 million people live where air in 2002 was unhealthy at times. Metropolitan ground-level ozone has not improved since 1989, with well more than half of all monitoring sites reporting levels in 2002 that exceeded the national ambient air quality standard. NOₓ (a precursor to ozone) and particulate emissions, whose primary sources are motor vehicles and fuel burning for electricity generation, have only improved about 10 percent in the last ten years.

Thus, achieving our air quality goals remains an enormous task. Yet, the effort to provide healthy air is worthwhile. Healthy air quality is more beneficial to society than the costs of getting it. At least, that is what OMB says.

The legal tool box we currently use to achieve our air quality goals is as complex as the task is challenging. The Clean Air Act and its regulations are so complex, and the stakes for industry, the public, and government are so high, that the field displays characteristics similar to what many have called in the military context “the fog of war.” We act in the fog of air regulation.

Individually, and as a whole, the articles in this issue describe a legal structure that is almost beyond understanding (and perhaps rational control). When read together, the articles paint a picture of a legal and regulatory system that is being pushed to and perhaps beyond its limits. It is a system in which even the best air lawyers can barely penetrate the opaque problems on which they work.

I urge you to read the articles in this issue not only to understand the difficult and technical legal issues our excellent authors have worked so hard to explain, but also to appreciate the challenge regulating air pollution presents to society and the legal profession. We must be more than merely embattled litigators. We must help craft and implement a legal system that is comprehensive, understandable, and effective in achieving and sustaining healthy, clear air and a stable climate. We have a profound obligation to society, ourselves, and future generations to use our legal skills to lift the fog.

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