

Dormant Noise Program's Silent Reverberations

In 1981, the Reagan administration quietly put the Environmental Protection Agency's noise-abatement program to sleep. Ten years later, a federally commissioned study finds the once-robust program still sleeping soundly. Moreover, the study's author reports, most state and local programs for noise abatement "have disappeared" as a result of the federal program's near-comatose condition.

Congress enacted the Noise Control Act (NCA) of 1972 to develop a regulatory and educational program that would protect people from "noise that jeopardizes their health or welfare." At the time, EPA estimated that 34 million individuals were exposed to nonoccupational noise capable of inducing hearing loss, that 44 million lived in dwellings exposed to annoyingly high levels of transportation and aircraft noise, and that 21 million confronted potentially disruptive levels of construction noise.

Although EPA "made a reasonable start in implementing the act, it was a long way from finishing its noise agenda at the time [EPA's Office of Noise Abatement Control (ONAC)] was disbanded," says law professor Sidney A. Shapiro, who conducted the new analysis.

Because Congress never repealed the act, EPA remains legally responsible for enforcing federal noise regulations. For the past decade, however, the agency has lacked funds to do so, and its noise-control activities have "ground to a halt," says Shapiro, a regulatory analyst at the University of Kansas in Lawrence.

Moreover, because the NCA preempts state and local governments from regulating noise in many settings, "these levels of government may not be able to step into the void created [by ONAC's demise]," he observes. And although the NCA does permit states to set noise standards that match those developed under ONAC — and to police them — many ONAC standards have become obsolete, Shapiro finds. Yet the NCA prevents these governments from setting standards stricter than ONAC's.

The status of EPA's noise program appears unique in federal environmental law, Shapiro told a committee of the Administrative Conference of the United States at a meeting last week in Washington, D.C. This federally chartered body studies and advises federal agencies on procedural issues. At EPA's behest, the conference is analyzing the fallout from 10 years of regulatory inaction on noise and drafting recommendations for some of the resulting problems.

Intention of deregulation: Much of last week's discussion by the Administrative Conference's regulatory committee re-

volvied around whether the White House had intended much of the *de facto* state and local deregulation that resulted from ONAC's disbanding. Intent is important because the conference, prohibited from judging a policy's merit, must focus solely on how to comply with a policy's intent.

In 1981, the White House Office of Management and Budget (OMB) ordered EPA officials to strip all funding from ONAC, which had been a pivotal player in U.S. noise-control efforts. Citing severe fiscal constraints, OMB informed EPA "that the matter was nonnegotiable," Shapiro says.

Charles L. Elkins, then director of ONAC, recalls his surprise when "interest groups did not come swarming out to protect the program." Nor did the act's former patrons on Capitol Hill spring to its defense. Indeed, says Shapiro, "Congress' eventual acquiescence [to ONAC's disbanding] ... was, and remains, unique."

Conference member Jonathan Rose, of Arizona State University's College of Law in Tempe, observes that OMB's action created "the best possible situation" for noisy industries: withdrawal of funds for enforcing the few federal regulations promulgated by the NCA, coupled with provisions that prevented regional regulations from picking up where ONAC left off.

EPA and Congress knew that ONAC's demise would precipitate this situation, says Elkins, now an assistant to EPA's General Counsel. At congressional hearings during ONAC's phaseout, there was talk of repealing sections of the NCA so that state and local governments could assume certain tasks that would otherwise be preempted, Elkins noted last week. But those discussions ended when industry representatives argued that they preferred to see the no-enforcement/preemption situation maintained, he added.

Policy failure: "The NCA is by any measure a public policy failure," Shapiro contends in his draft report.

Congress created ONAC to limit harmful public exposures, but during its decade of operation, the program did not enact emission standards for all the noise sources EPA had identified as warranting control, Shapiro says. Moreover, he notes, "almost no progress was made concerning labeling or purchase by the federal government of low-noise products." And although he credits ONAC with making "significant strides" in research, noise education and the coordination of state and local noise-abatement programs, Shapiro says the program's "funding was eliminated just as the initial fruits of these labors became apparent." Today, he

reports, "EPA is barely able to enforce its regulations, and fiscal limitations prevent it from updating them, although several are out of date or inadequate to protect the public."

"Like many government agencies, ONAC had a mixed record of success," Shapiro says. But, he concludes, "there was certainly nothing to indicate that that record would justify [its] elimination."

Uncertain future: At the time of its demise, says Elkins, EPA's noise program "was a large operation," with more than 100 staff members and perhaps another 1,000 consultants serving as contract employees. Today, he says, "most of the senior members of [EPA] probably don't know we have a Noise Control Act."

Nor has the noise problem gone away. When last estimated in 1981, U.S. noise levels were "significant," Shapiro reports. Today, nonoccupational noise in the United States appears "at least as great, and most probably greater, than it was 10 years ago," says Alice Suter, a noise consultant in Cincinnati. Noise tends to escalate with population growth and urbanization, she notes, and both have increased since ONAC's demise. She also cites a proliferation of recreational products — such as loud toys and pocket-sized stereo headset systems — that can endanger hearing.

In her new study of U.S. noise, commissioned by the Administrative Conference, Suter asserts that while "the effects of noise are seldom catastrophic," they can diminish hearing, promote stress and anxiety, disrupt sleep, impair learning and increase antisocial behavior. Urban noise remains "a major threat to human health," she concludes.

In his draft report, Sidney Shapiro argues that EPA should revive ONAC or create a new program to coordinate federal noise-abatement activities and to update or develop new noise standards. But Michael Shapiro, EPA's deputy assistant administrator for air and radiation programs, says such recommendations may be premature. "We're not asking you to advise us as to whether or not EPA should be asking for funding [to revive ONAC]," he told the conference. Every year, he said, "EPA could — and has elected not to — request funding for noise abatement activities." While he didn't rule out the possibility that his agency might one day attempt to revive the program, he said EPA's immediate interest is learning the effects of ONAC's demise and determining the agency's options and responsibilities.

Next month, the conference's regulatory committee plans to resume discussion of just that. — J. Raloff