

RESEARCH PROJECT TECHNICAL COMPLETION REPORT

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Project Title: A Study of Legal and Administrative Practices Relating to
Lake Pollution in the Northeast

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Project Began July 1969 Project Ended June 1972

PROJECT OBJECTIVES

To identify major legal problems relative to lake pollution in the north-east United States, generally, and Connecticut in particular. To establish basic criteria for consideration in the formulation of policies and methodologies for the enactment of legislation in the area. To identify changes in statutory law and administrative structure needed to facilitate more extensive protection and utilization of lake waters.

ACHIEVEMENT OF OBJECTIVES

A basic inventory of legal techniques in the United States and the North-east for lake preservation was compiled. The methods of control over inland lake aquatic environments and problems inherent therein have been analyzed and descriptively applied to a narrative on lake pollution and lake preservation. In addition, the problem area of thermal dangers to inland lakes was explored in detail and a separate analysis of thermal problems prepared, including a considerable discussion of the landmark Calvert Cliffs Decision of 1971.

RESEARCH PROCEDURES USED

Primarily library references and case/legislation analysis. A detailed and exhaustive review was made of judicial decisions applicable to water quality in lakes, and of legislative developments applicable to lake water quality in the United States. Particular reference was given to Connecticut water jurisprudence and legislative developments in water quality control. Resources have been: state and federal reporter systems, state and federal statutes, federal proposals and committee reports, relevant literature, and interviews with leading proponents of lake pollution control. An additional detailed exploration of thermal dangers

to lakes was made and an analysis of thermal problems prepared. A basic inventory of legal techniques in the United States and the Northeast for lake preservation was compiled.

CONCLUSIONS

The basic framework for lake pollution control exists within each of the New England States. The failure to identify clearly the major objectives of aquatic environmental control and to relate them separately to lake water pollution and preservation of the future of the lake itself as a resource appears to be a pivotal rectification to be sought in legislation and judicial action toward lake preservation. Once the goals are clearly stated, through the exercise of the sovereign police power inherent within each state and selected powers which have been delegated to local communities, comprehensive controls governing discharges, uses of water, and related upland development can be undertaken. A model shoreline zoning ordinance, such as Wisconsin statutes, should be applied toward lake management in the Northeast.

Thermal pollution resulting from nuclear-powered generating plants typifies the complexity of present and future threats to the ecology of lakes. The landmark decision of the District of Columbia Court of Appeals in Calvert Cliffs v. Atomic Energy Commission, July 1971, appeared to resolve a number of critical questions. On closer analysis, it becomes apparent that the case not only did not resolve these problems, but created whole new areas of ambiguity regarding federal, state and local action. There still remain the dangers of short-sighted locational and operational practices on the shores of highly fragile lakes, and a lack of extended policy regarding the balance of both economic and environmental interests in decision-making about nuclear power productions. The role of citizen environmental groups may be the controlling force in state and federal decision-making processes. Without the support of such groups both state and federal programs for the establishment of nuclear power networks will face repeated conflicts.

PUBLICATION

Reis, R. I. 1972. "Environmental Activism: Thermal Pollution--AEC and State Jurisdictional Considerations", Boston College Industrial and Commercial Law Review, 13(4):633-684. (Released under the same title as Institute of Water Resources Report No. 15.)

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ABSTRACT

A detailed and exhaustive study has been made of judicial decisions and legislative developments applicable to lake water quality in the U. S., and a basic inventory of legal techniques has been compiled. It has been concluded that the overall framework for general organic or chemical lake pollution control exists in state legislative or executive responsibilities, especially in New England. In the matter of thermal pollution by nuclear-power generating plants, a decision by a U. S. Court of Appeals (Calvert Cliffs 1971) appeared to state clearly the roles of the Atomic Energy Commission and the Environmental Protection Agency in preventing environmental damage by nuclear power plants. Close examination showed that many important questions are left unanswered by the Calvert Cliffs decision. The most significant role in environmental decision-making and policy-extending may be played by citizen environmental action groups, and responsiveness to such groups may be of substantial importance to state and federal agencies.

KEY WORDS:

- *Judicial decisions
- *Lake water pollution
- *Thermal pollution
- *Decision making
- *Water policy
- Legislation
- Nuclear Power Plants
- Environmental effects

- *Calvert Cliffs Decision
- *Environmental Activism
- *Citizen groups
- Legal techniques
- U. S. Court of Appeals
- Atomic Energy Commission
- Environmental Protection Agency
- Federal agencies