

WATER POLLUTION CONTROL THROUGH INTERSTATE AGREEMENT

If each of the major river basins in the United States were located entirely within the boundaries of a single state, the problem of water pollution could be attacked on a basin-wide scale through individual state action. Unfortunately most economically significant rivers flow through more than one state, and the pollutants they carry affect all of the states in the basin. To plan a program of water pollution control for these streams on a basin-wide scale, therefore, requires some type of interstate cooperation. The interstate compact provides the states with a legal structure through which can be created an agency capable of planning and administering a basin-wide program of water pollution control for an interstate river.

The problems inherent in a multi-agency approach indicate the desirability of granting a single agency the authority to plan a program of water pollution control for the entire river basin. If responsibility for water pollution control is divided among several agencies, whether their authority be concurrent or complementary, the efforts of one agency may be totally negated by the activity, or inactivity, of another. When the success of one agency's program depends almost entirely upon the actions of another, there remains little motivation to implement an effective program. This is particularly true when the agencies are in separate states. If an upstream state refuses to implement an effective program, there remains little impetus for a downstream state to spend millions of dollars on sewage treatment facilities which produce little improvement in the quality of the river. A basin-wide approach assures the citizens of a downstream state that the same criteria imposed on them are being enforced in upstream states.

Granting an agency the authority to act in the entire basin favorably affects both the total cost of water pollution control programs and the allocation of this cost among the basin states. Duplication of research and study on problems common to all of the basin states is eliminated, and the total number of administrative personnel is reduced. Under the unified approach, the total cost of pollution control can be fairly allocated among the basin states. The municipalities downstream are not forced to treat their sewage to a disproportionately high degree as they would if the pollution absorption capacity¹ of the river has been fully utilized by the upstream states. Each state is able to use a proportionate part of the available capacity.²

The necessity of administering a water pollution control program together with, and as an integral part of, other water resource programs points up the need for a single regional agency. No agency can effectively control water quality if it has no authority over water quantity. When the amount

¹ Pollution absorption capacity refers to that amount of waste material which can be discharged into the river without producing deleterious effects.

² See T. CAMP, *WATER AND ITS IMPURITIES* 207-08 (1963).

of water available to dilute waste products decreases, the degree to which the stream is polluted increases. In a like manner, water quantity is related to the production of hydroelectric power and the possible recreational uses of the stream.³

Planning a basin-wide program of water pollution control has certain disadvantages which must also be taken into consideration. One of these has been described as the "absence of a regional awareness on the part of the public."⁴ This absence may be attributed to a variety of factors, one of which is the inability of the populace to relate to a regional governmental unit. People are accustomed to certain governmental units, and they recognize them as proper levels at which to solve problems. The city, the county, the state and the nation are recognized units. For a variety of reasons people have developed an affinity for these units, referred to on the national scale as patriotism, and on the local level as civic pride. This attitude does not now exist toward a regional unit of government.

The development of regional awareness is further inhibited by the failure of the public to realize that the problems of a river are regional in scope.

The residents of a given river city do not understand that what happens to them, with respect to such common aberrations as floods and impure water, is determined not by the relatively short reach of the stream familiar to them but by occurrences elsewhere in the basin . . .⁵

Another factor inhibiting the development of this awareness is the vast array of interests present in a river basin. "These are manifest in the urban-rural rivalries, the industrial-agricultural differences, [and] the upstream-downstream controversies . . ."⁶ While all of these conflicts exist within many of the individual states, state governments have existed as political entities for many decades. If the area presently encompassed within the boundaries of California were not yet a state, great difficulty would be encountered today in forming a workable state government combining the agricultural north and the industrial south. This same problem is encountered in the attempt to form a regional agency. "The river basin plan is good river management but it is not logical politically."⁷

A regional agency may overcome a lack of regional awareness through the use of an educational system designed to inform citizens of the regional scope of water pollution problems. To develop a community of interest it must demonstrate the gravity of the crisis posed by water pollution. Situations of crisis and catastrophe have historically had a tendency to unite people for effective action.⁸

³ A. KNEESE, *APPROACHES TO REGIONAL WATER QUALITY MANAGEMENT* 31-33 (1967).

⁴ R. MARTIN, G. BIRKHEAD, J. BURKHEAD & F. MUNGER, *RIVER BASIN ADMINISTRATION AND THE DELAWARE* 322 (1960) [hereinafter cited as MARTIN].

⁵ *Id.*

⁶ *Id.* at 323.

⁷ F. GRAHAM, *DISASTER BY DEFAULT—POLITICS AND WATER POLLUTION* 217 (1966) [hereinafter cited as GRAHAM].

⁸ MARTIN 325.

Another problem encountered in an attempt to form a regional governmental unit is obtaining enough power to implement an effective program. It is axiomatic that whatever regulatory and enforcement power it possesses must be delegated by the basin states. The reluctance of a legislature to relinquish a part of its authority to an agency which can be controlled by representatives of other states often results in a very limited grant of authority,⁹ or a voting requirement which stifles effective action.¹⁰

The formation of a regional government unit by interstate compact is a time-consuming process. The average time required to draft an acceptable document and obtain ratification by all of the interested states has been five years for water pollution control compacts.¹¹ The individual compacts vary substantially from this average. The Delaware River Basin Compact required only two years from the completion of the preliminary study until it became effective.¹² The New England Interstate Water Pollution Control Compact on the other hand, required over eleven years.¹³ This time period has several detrimental consequences. Since increases in the population during this period may cause increases in the amount of pollution, the problem confronting the agency may be greater, and it may lose an opportunity to deal with the problem at a manageable level. In the case of lakes and other nonflowing bodies of water, the pollution which occurs during this period may prove uncorrectable.¹⁴ Another consequence is felt during a period of constantly increasing prices. The cost of pollution control facilities may greatly increase during the time required to negotiate an acceptable document.

Basin-wide control of water pollution can be achieved in ways other than the use of an interstate compact. A uniform system of legislation with each of the basin states enacting similar laws would provide some degree of regionalism. These could be modeled after the Suggested State Water Pollution Control Act,¹⁵ or a similar proposal. While uniform legislation would be somewhat better than a multitude of dissimilar state statutes, it would fail to take full advantage of the administrative and economic benefits inherent in the use of a regional agency. It would also place the burden of enforcement on the individual states, with the result that no state would be assured

⁹ See text accompanying notes 182–84 *infra*.

¹⁰ See text accompanying note 98 *infra*.

¹¹ This period of time is computed from the time formal consent of Congress to begin negotiations is granted until final congressional consent is obtained. The only exception is the Tri-State Compact for Pollution Abatement, in which no formal consent to begin negotiations was given. If the point of time was used at which the last member ratified, this average would be substantially higher. See, e.g., Potomac River Basic Sanitation Compact, *infra* note 182, in which congressional approval was granted in 1940 but Pennsylvania did not approve until 1945.

¹² See text accompanying note 56 and material cited in note 59 *infra*.

¹³ See material cited in note 206 *infra*.

¹⁴ The problems of the Lake Tahoe Basin clearly illustrate the effects of delay. During this period the natural process of eutrophication increases, and the natural clarity and purity of the lake may be gone forever. For a discussion of the pollution problem in the Lake Tahoe Basin, see Comment, *Lake Tahoe: The Future of a National Asset—Land Use, Water, and Pollution*, 52 CALIF. L. REV. 563, 601–22 (1964).

¹⁵ U.S. DEP'T OF THE INTERIOR, FEDERAL WATER POLLUTION CONTROL ADMINISTRATION, SUGGESTED STATE WATER POLLUTION CONTROL ACT, REVISED (1965).

of diligent enforcement by the others. This would cause each state to be hesitant in applying the law to its citizens.

The creation of a regional agency by parallel state legislation is closely allied to the above method. The structure and operation of this method is best exemplified by the defunct Interstate Commission on the Delaware River Basin (INCodel).¹⁶ First created at an informal meeting between the four basin states in 1936,¹⁷ the agency gained statutory authorization by legislation in Pennsylvania,¹⁸ New York,¹⁹ New Jersey,²⁰ and Delaware.²¹ INCodel used as its operative structure various committees, each responsible for a different water resource problem.²² One such committee, the Committee on Water Quality, made up of the directors of the member states' water pollution control agencies, was responsible for drafting and sponsoring²³ a uniform pollution control act.²⁴ This act divided the basin into several zones and set the effluent standards for each.²⁵ Responsibility for enforcing pollution standards was left to the individual states, INCodel possessing no power to compel enforcement.²⁶ The pollution control responsibilities of INCodel, along with all of its other activities, were assumed by an agency created under an interstate compact in 1961.²⁷

INCodel experienced little of the difficulty one would anticipate under this type of arrangement. The pollution control bill which it recommended was adopted by all of the members, and was enforced by them with some success.²⁸ In 1951 INCodel proposed an interstate compact to govern the water resources of the basin. The proposal's genesis, however, did not lie in a complete failure of INCodel's pollution control program, but rather in a need for a comprehensive plan to solve all the water resource problems of the basin.²⁹ Although this particular proposal was not accepted by the member states, they have subsequently adopted a similar act.³⁰

I. THE COMPACT DEVICE

If the agreement creating INCodel had either granted regulatory authority or pledged certain action on the part of the signatory states, it would

¹⁶ For a complete discussion of the activities of INCodel, see MARTIN 282-305.

¹⁷ *Id.* at 283.

¹⁸ Pa. Laws 1945, No. 123, at 272.

¹⁹ N.Y. Laws 1939, ch. 600, at 1409.

²⁰ N.J. Laws 1939, ch. 146, at 477.

²¹ Del. Laws 1941, ch. 93, at 280.

²² MARTIN 284.

²³ See MARTIN 286 for a discussion of the problems this committee encountered in obtaining passage of this bill by the member states.

²⁴ For text of act, see U.S. DEP'T OF THE INTERIOR, DOCUMENTS ON THE USE AND CONTROL OF THE WATERS OF INTERSTATE AND INTERNATIONAL STREAMS 354-59 (T. Witmer ed. 1956) [hereinafter cited as DOCUMENTS].

²⁵ DOCUMENTS 355-59.

²⁶ *Id.* at 354, 355.

²⁷ INCodel was superseded by the Delaware River Basin Compact, 75 Stat. 688 (1961) discussed in text accompanying notes 56-84 *infra*.

²⁸ MARTIN 286.

²⁹ MARTIN 295. For text of the proposed compact, see DOCUMENTS 302.

³⁰ See note 27 *supra*.

have required congressional consent. The reason for this is the requirement in the Constitution that "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State . . ."³¹ A determination whether an agreement requires consent must begin with a consideration of the purpose of congressional consent,³² which is "to make certain that no such agreement can stand against the will of Congress."³³ A test, still considered to be valid, for determining the need for congressional consent³⁴ was spelled out by the Supreme Court in *Virginia v. Tennessee*.³⁵ This test, which takes into consideration the purpose of the requirement, makes consent mandatory in "those agreements which affect the political balance within the federal system or affect a power delegated to the national government"³⁶ Since the federal government has the power to control pollution in interstate streams,³⁷ an interstate water pollution control compact must have congressional consent. If a question did exist about the need for consent to this type of compact, it was rendered moot by the enactments in 1956 of legislation specifically requiring it.³⁸

The interstate compact is in effect a contract between the member states. This principle has been recognized by the Supreme Court for many years.

³¹ U.S. CONST. art. I, § 10, cl. 3. Care should be taken to distinguish between the consent of Congress given before negotiations are begun and the formal consent of Congress given after the compact has been drafted. The prior consent of Congress is nothing more than an "invitation to negotiate." V. THURSBY, *INTERSTATE COOPERATION—A STUDY OF THE INTERSTATE COMPACT* 75 (1953). For a full discussion of this distinction and the further difference between the two uses of "prior consent," see F. ZIMMERMANN & M. WENDELL, *THE INTERSTATE COMPACT SINCE 1925*, at 91–94 (1951). For a discussion of the procedure used by Congress in granting consent to interstate compacts, see Leach, *The Federal Government and Interstate Compacts*, 29 *FORDHAM L. REV.* 421, 428 (1961). Until recently this consent had been given as a matter of course, but the attitude of Congress toward pollution control compacts seems to have changed. This change is evidenced by the problems encountered in gaining consent to the Tennessee River Basin Water Pollution Control Compact, discussed in text accompanying notes 157–58 *infra*. For a discussion of this change as it relates to other water pollution control compacts, see Hines, *Nor Any Drop To Drink: Public Regulation of Water Quality: Interstate Arrangements for Pollution Control*, 52 *IOWA L. REV.* 432, 444 & n.64 (1966) [hereinafter cited as Hines]. For examples of this change in regard to compacts in other areas, see Leach, *supra*.

³² Discussions of this requirement are found in F. ZIMMERMANN & M. WENDELL, *THE LAW AND USE OF INTERSTATE COMPACTS* 21–24 (1961); F. ZIMMERMANN & M. WENDELL, *THE INTERSTATE COMPACT SINCE 1925*, at 32–42 (1951). The latter treatise also contains a discussion of the arguments over the need for presidential approval. It has in fact been obtained in most compacts. *Id.* at 94.

³³ F. ZIMMERMANN & M. WENDELL, *THE LAW AND USE OF INTERSTATE COMPACTS* 22 (1961).

³⁴ *Id.*

³⁵ 148 U.S. 503 (1893).

³⁶ F. ZIMMERMANN & M. WENDELL, *THE LAW AND USE OF INTERSTATE COMPACTS* 21 (1961).

³⁷ Edelman, *Federal Air and Water Control: The Application of the Commerce Power To Abate Interstate and Intrastate Pollution*, 33 *GEO. WASH. L. REV.* 1067 (1965).

³⁸ 70 Stat. 498 (1956), 33 U.S.C.A. § 466b (b) (Supp. 1967). *But see* H.R. REP. NO. 2587, 85th Cong., 2d Sess. (1958) and S. REP. NO. 1888, 85th Cong., 2d Sess. (1958), which indicate that the Great Lakes Basin Compact (discussed in text accompanying notes 227–33 *infra*) does not need congressional consent.

As early as 1823 in the case of *Green v. Biddle*³⁹ the Court recognized a compact as a contract. This case involved the passage of a statute by a state which was in conflict with the provisions of a compact. The Court declared the statute unconstitutional using the Contract Clause of the United States Constitution as its basis.⁴⁰ The equating of a compact to a contract has occurred as recently as 1951 in the case of *West Virginia ex rel. Dyer v. Sims*⁴¹ where Mr. Justice Reed in a concurring opinion states, "Examination here, under the Contract Clause, is to enforce the federal provision against impairment and is made only to decide whether under the Contract Clause there is a contract and whether it is impaired."⁴²

Not only is a compact a contract, but due to the nature of the contracting parties, it is the law of each of the signatory states.⁴³ An agency created by the compact to administer its provisions is therefore an agency of each signatory state.⁴⁴ This fact becomes particularly important when the federal government is a signatory party to a compact. When this is the case, the interstate agency enjoys many of the attributes of a federal agency.⁴⁵

The jurisdiction of the Supreme Court to interpret the provisions and validity of a compact which has been given congressional consent is well settled. It may be founded upon the original jurisdiction of the court to hear controversies between two or more states,⁴⁶ or on the appellate jurisdiction as set forth in the Judicial Code.⁴⁷ The power of the Court to review a state court decision on the validity or construction of an interstate compact was settled in the case of *Delaware River Joint Toll Bridge Comm'n v. Colburn*.⁴⁸ The Court held that the construction of a compact, to which the Congress has consented, was a question of federal title, right, privilege, or immunity and, therefore, was reviewable by the Court on a writ of certiorari.⁴⁹

A recent amendment to the Federal Water Pollution Control Act grants nonexclusive original jurisdiction to United States district courts in suits concerning the construction or application of water pollution control compacts.⁵⁰ To invoke this jurisdiction the following criteria must be met: the suit must involve the pollution of interstate waters alleged to be in violation of the provisions of the compact, a state or states signatory to the compact must be the plaintiff, the compact must provide that the signatory states agree to be sued in a federal court, and the defendants must not be citizens

³⁹ 21 U.S. (8 Wheat.) 1 (1823).

⁴⁰ *Id.* at 91-92; V. THURSBY, INTERSTATE COOPERATION: A STUDY OF THE INTERSTATE COMPACT 38 (1953).

⁴¹ 341 U.S. 22 (1950).

⁴² *Id.* at 33.

⁴³ F. ZIMMERMANN & M. WENDELL, THE LAW AND USE OF INTERSTATE COMPACTS 1-2 (1961).

⁴⁴ *Id.* at 11.

⁴⁵ See text accompanying note 58 *infra*.

⁴⁶ U.S. CONST. art. III, § 2.

⁴⁷ 28 U.S.C. § 1257 (1964).

⁴⁸ 310 U.S. 419 (1939).

⁴⁹ *Id.* at 427.

⁵⁰ Water Pollution Control Act, 33 U.S.C. § 466g-1 (1964).

of the plaintiff state.⁵¹ There is no limitation on the amount in controversy. The amendment had two purposes, the first of which was to assure signatory states that a neutral forum was available for the enforcement of compact provisions.⁵² A state no longer must commence an action in the courts of the state in which the polluter is located. The other purpose of the act was to give the signatory states a forum other than the Supreme Court in which they could determine their rights under the compact. Supreme Court litigation is often difficult and complex, and many of the problems arising in this situation can just as well be handled by some court other than the Supreme Court.⁵³

In the case of *West Virginia ex rel. Dyer v. Sims* the Court set forth the principle that when a conflict exists between the provisions of a compact and the interpretation of a state statute or constitution by the courts of the state, the Supreme Court has the ability to make an independent determination of the meaning of the state statute or constitution.⁵⁴ The assurance that the meaning of compact provisions and the state constitutional validity of these provisions will be determined by an independent forum gives added stability to the use of the interstate compact.

II. WATER POLLUTION COMPACTS

The attributes of the interstate compact would seem to make it well suited to water pollution control. It allows the states to create an agency with the authority to plan and enforce a basin-wide program of pollution control, and assures each of them that uniform standards will be enforced. In practical application, however, no agency created by an interstate compact has been successful in improving the quality of the water within its jurisdiction to an acceptable level.⁵⁵ This failure has three main causes: the failure to grant an agency authority to deal with water pollution as an integral part of other water resource problems, the failure of the agencies to set adequate standards or enforce the minimal standards set, and the lack of authority in some agencies to set or enforce any standards. With but one exception, all existing interstate agencies possess two or more of these problems. Discussion of the agencies will begin with this exception.

A. Delaware River Basin Compact

In 1955 the governors of the Delaware River basin states created the Delaware River Advisory Committee. This committee was instrumental in forming a private research foundation to study possible solutions to the

⁵¹ Water Pollution Control Act, 33 U.S.C. §466g-1(c) (1964).

⁵² *Hearings on H.R. 6717 Before the Subcomm. No. 3 of the House Comm. on the Judiciary*, 87th Cong., 1st Sess., ser. 23, at 8 (1961).

⁵³ *Id.* at 8-9.

⁵⁴ 341 U.S. 22, 28 (1950). "The Supreme Court of Appeals of the State of West Virginia is, for exclusively State purposes, the ultimate tribunal in construing the meaning of her Constitution. Two prior decisions of this Court make clear, however, that we are free to examine determinations of law by State courts in the limited field where a compact brings in issue the rights of other States and the United States."

⁵⁵ See HINES, *supra* note 31, at 453.

water resource problems of the basin. The foundation employed the Maxwell Graduate School of Syracuse University to study the basin and recommend possible governmental methods to manage its water resources. This study was completed in 1959. The most novel aspect of its recommendation was the formation of an interstate compact with the federal government as a signatory party.⁵⁶ Until that time, federal participation in interstate compacts had consisted of federal representation in the negotiation stage and some form of representation in the compact agency. The Delaware compact set a precedent by making the federal government a signatory party and, therefore, making the compact agency an instrumentality of the federal government.⁵⁷ The import of this is well stated in a Senate report on the consent to this compact:

Many of the problems of any large river can be most efficiently solved by applying development and control measures in combination. . . . In many instances some of the measures required can be exercised only under State power, while others are available only (or primarily) to the Federal Government. The combination of Federal and State powers within one basin agency will therefore mean that the agency can integrate all available powers and at least have the opportunity to produce the least cost solution to water problems. Such opportunities are not available to wholly Federal or wholly non-Federal agencies.

. . . In no realistic sense can an exclusively interstate basin agency plan for, or integrate, the activities of Federal agencies. The Federal Government can be controlled only by itself. Having the Federal Government as one of the primary parties to the compact is the best way to enable the basin agency to effectively coordinate and integrate the programs of the Federal agencies.⁵⁸

The recommendations of this study were presented to the Advisory Committee which drafted a compact incorporating them. This compact,⁵⁹ which was ratified by all of the signatory parties within one year, created the Delaware River Basin Commission, made up of the governors of the four basin states and a representative of the federal government.⁶⁰ Its primary responsibility is to formulate and implement a comprehensive plan for the development of the basin's water resources.⁶¹ It was given the authority to incorporate into this plan provisions for the control and abatement of water pollution,⁶² and for enforcement of these provisions through the courts.⁶³

The pollution control activities of the Commission began in 1966 after

⁵⁶ Grad, *Federal-State Compact: A New Experiment in Co-operative Federalism*, 63 COLUM. L. REV. 825-27 (1963).

⁵⁷ For a discussion of the constitutionality of a federal-state compact, see S. REP. NO. 854, 87th Cong., 1st Sess. 36-48 (1961).

⁵⁸ *Id.* at 17-18.

⁵⁹ Delaware River Basin Compact, 75 Stat. 688 (1961). Member states are: Delaware, New Jersey, New York, and Pennsylvania.

⁶⁰ Art. 2, § 2.2, 75 Stat. 691 (1961).

⁶¹ Art. 3, § 3.2, 75 Stat. 692 (1961).

⁶² Art. 5, § 5.2, 75 Stat. 696 (1961).

⁶³ Art. 5, § 5.4, 75 Stat. 697 (1961).

completion of a study of the Delaware estuary by the Federal Water Pollution Control Administration,⁶⁴ made at the request of the Commission. It concluded that the waters of the estuary were of generally poor quality.⁶⁵ The study area began in Trenton, New Jersey, where the quality of the water was excellent. Below this point conditions began to deteriorate, and at the point where the river crossed the Delaware state line the deterioration had become extreme.⁶⁶ The sources of pollution were discharges of untreated or inadequately treated municipal sewage, industrial waste, and oil from vessels and nearby refineries.⁶⁷ The study recommended five alternative sets of waste treatment standards, each resulting in a different level of water quality.⁶⁸ The highest of these would have required tertiary treatment, and would have resulted in a significant improvement in the quality of the river.⁶⁹ The lowest would have required primary treatment and would have maintained the 1964 level of water quality.⁷⁰

In 1967 the Commission adopted a compromise version of the second highest standards.⁷¹ This was incorporated into the comprehensive plan and set forth the minimum treatment requirements for all sewage discharged into the basin. These were that all wastes receive secondary treatment, all wastes containing disease producing organisms be "effectively disinfected," and all wastes contain no more than negligible amounts of various deleterious substances.⁷² The 1967 addition also set water quality criteria for different sectors of the river⁷³ and provided that the Commission could impose higher treatment standards in the event that they were needed to maintain these criteria. A proposed amendment to the comprehensive plan, which has not yet been adopted, explains and amplifies the minimum treatment requirements. It defines "effectively disinfected" by indicating the bacterial limits which discharges must meet.⁷⁴ It sets color limits for effluent discharges,⁷⁵ as well as maximum temperature gradients.⁷⁶ The Commission has exercised its authority to require a higher level of treatment by imposing limits on the

⁶⁴ U.S. DEP'T OF THE INTERIOR, FEDERAL WATER POLLUTION CONTROL ADMINISTRATION, DELAWARE ESTUARY COMPREHENSIVE STUDY, PRELIMINARY REPORT AND FINDINGS (1966) [hereinafter cited as DELAWARE STUDY].

⁶⁵ *Id.* at v-vi.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at viii-xi. The effect of setting water quality criteria is to prohibit the discharge of wastes which would reduce the quality of the receiving waters to less than their use classification. By using these criteria, the state can determine what level of sewage treatment is required before discharge.

⁶⁹ *Id.* at 65. For definitions of primary, secondary, and tertiary treatment see, J. PERRY, OUR POLLUTED WORLD—CAN MAN SURVIVE? 80-86 (1967); J. CLARK & W. VIESSMAN JR., WATER SUPPLY AND POLLUTION CONTROL 399-400 (1965).

⁷⁰ *Id.* at ix, 66.

⁷¹ DELAWARE RIVER BASIN COMMISSION, ANNUAL REPORT 1967, at 6-7 (1967).

⁷² Delaware River Basin Commission, Basin Rules and Regulations Water Quality part II, art. 1, § 1.3 (1967).

⁷³ *Id.*, part II, arts. 2-3.

⁷⁴ *Id.*, part III, art. 3, § 3.7.

⁷⁵ *Id.*, part III, art. 3, § 3.8.

⁷⁶ *Id.*, part III, art. 3 §§ 3.9-3.10.

discharge of certain substances in order to maintain the water quality criteria.⁷⁷

The compact grants the Commission broad authority in other areas of water resource administration which will have an effect on its pollution control program. It has the ability to allocate the waters of the basin subject to certain limitations,⁷⁸ the authority to construct, own, and operate dams and reservoirs, and the power to regulate the release and storage of these waters for stream quality control.⁷⁹

Two other powers granted to the Commission could be used in its program of pollution control. Under the terms of the compact, the Commission need not wait for a recalcitrant municipality to install treatment facilities. It has the authority to construct the necessary facilities,⁸⁰ and levy user charges for their operation.⁸¹ The Commission must also approve any project which will have a substantial effect on the water resources of the basin.⁸² By making use of this, the Commission could utilize a tool which individual states have found effective to force cities to install treatment facilities.⁸³ By incorporating particular interceptor and treatment works into the comprehensive plan, it could prohibit the issuance of sewer extension permits until adequate treatment facilities are constructed.⁸⁴

The Commission has taken the first step toward controlling water pollution in this important river basin. To what extent it will enforce its standards, and continue to require additional treatment as necessary, cannot at present be determined. If the Commission maintains its present level of activity, however, it may provide the first example of a compact agency taking full advantage of the benefits of basin-wide pollution control.

The advantages of the federal-state compact have prompted other states to look to this device as a method of solving interstate pollution problems. In 1962 the Interstate Advisory Committee on the Susquehanna River Basin was established with instructions to draft an interstate compact modeled after the Delaware compact.⁸⁵ By early 1969, New York,⁸⁶ Maryland,⁸⁷ and Pennsylvania^{87a} had given approval to a final draft, but the federal government had not yet done so. The provisions of this compact are almost identical to those of the Delaware compact, with one important exception.

⁷⁷ *Id.*, part III, art. 3, § 3.11.

⁷⁸ These limitations were established in a decree by the Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (1954), and are spelled out in art. 3, §§ 3.3–3.5 of the compact. The authority to regulate withdrawals and diversions is found in Delaware River Basin Compact art. 10, 75 Stat. 699–700 (1961).

⁷⁹ Art. 4, § 4.2(a), 75 Stat. 695 (1961).

⁸⁰ Art. 3, § 3.6(a), 75 Stat. 694 (1961).

⁸¹ Art. 3, § 3.7, 75 Stat. 694 (1961).

⁸² Art. 3, § 3.8, 75 Stat. 694–95 (1961).

⁸³ See text accompanying note 145 *infra*.

⁸⁴ Letter from Ralph Porges, Water Quality Branch Head, Delaware River Basin Commission, to the *U.C.D. Law Review*, Jan. 23, 1968.

⁸⁵ Interstate Advisory Committee on the Susquehanna River Basin, Memorandum of Legislative Intent Concerning the Susquehanna River Basin Compact 3 (April 4, 1967).

⁸⁶ N.Y. CONSERV. LAW § 835 (McKinney Supp. 1967).

⁸⁷ MD. ANN. CODE art. 96A, §§ 59–74 (1957).

^{87a} PA. STAT. tit. 32, §§ 820.1–820.8 (Supp. 1969).

Primary responsibility for the control of water pollution is left to the individual states.⁸⁸ This may have the affect of making the compact agency more reluctant to assume authority in pollution control.

In 1965 the Potomac River Basin Advisory Committee was created for the purpose of studying the water resource problems of that basin and proposing a solution.⁸⁹ By 1967 the Committee had completed its study and recommended a federal-state compact similar to the Delaware compact. The provisions of this document, like those of the Susquehanna compact, place the primary responsibility for pollution abatement in the hands of the signatory states.⁹⁰ As yet no action has been taken by any of the legislatures in regard to this compact, but increasing federal activity within this basin may prompt action in the near future.

B. Lake Champlain Basin Compact

The Lake Champlain Basin Compact is composed of two separate parts. Title II of article 6 is a federal-state compact and concerns the control of the water resources of this basin.⁹¹ It requires the formation and implementation of a comprehensive plan, but as yet has not been enacted by any of the signatory parties. As finally enacted it may follow closely the provisions of the other federal-state compacts.

The signatory parties to the other articles of this compact are the states of New York⁹² and Vermont.⁹³ The authority granted in these articles consists entirely of recommendation and coordination, with no power to compel action.

C. Tri-State Compact

While none of the other existing pollution control compacts grants the authority to plan comprehensively for the development of all water resources, several grant at least the power to plan and enforce a program of water pollution control. The oldest is the Tri-State Compact for Pollution Abatement, to which Congress consented in 1935.⁹⁴ It covers the waters of New York Harbor and its tributary rivers. The Interstate Sanitation Commission (ISC) was created by the compact and charged with its administration.⁹⁵ This

⁸⁸ Interstate Advisory Committee on the Susquehanna River Basin, Memorandum of Legislative Intent Concerning the Susquehanna River Basin Compact 4 (April 4, 1967).

⁸⁹ Potomac River Basin Advisory Committee, Potomac Compact—Teamwork for Action! (no date).

⁹⁰ *Id.*

⁹¹ Provision for the federal government's becoming a signatory party is made in N.Y. CONSERV. LAW § 823, art. 3, § 3.1 (McKinney 1967). Provision for the content of title II of article 6 is made in N.Y. CONSERV. LAW § 823, art. 6, tit. I, § 6.5 (McKinney 1967).

⁹² N.Y. CONSERV. LAW § 823 (McKinney 1967).

⁹³ VT. STAT. ANN tit. 10, § 171(a) (1968 Supp.).

⁹⁴ Tri-State Compact for Pollution Abatement, 49 Stat. 932 (1935). Member states are: New York, New Jersey, and Connecticut. When first enacted this compact dealt exclusively with water pollution control. It has since been amended to grant the Commission certain responsibilities in the area of air pollution control. For a discussion of these activities see INTERSTATE SANITATION COMMISSION, 1966 REPORT 3-8, 48-61 (1966) [hereinafter cited as ISC 1966 REPORT].

⁹⁵ Art. III, 49 Stat. 933 (1935).

agency began operation in 1936, five years before the third member had ratified the compact.⁹⁶ Five commissioners from each state make up the ISC,⁹⁷ and before an order can become effective three of each state's contingent must vote in favor of it.⁹⁸

Article VI sets forth the two use classifications to be applied by the ISC to the water within the jurisdiction.⁹⁹ Class "A" water is all water which is expected to be used for "recreational purposes, shellfish culture or the development of fish life." All other water falls within Class "B." Article VII sets the waste treatment standards to be applied and enforced by the ISC.¹⁰⁰ Sewage discharged into Class "A" water must have all floating solids and 60 percent of the suspended solids removed. In addition it requires a reduction in the number of coliform bacteria present. The removal of 60 percent of the suspended solids means that the treated sewage from a city of 100,000 people contains the same amount of suspended organic matter as the untreated sewage of a city of 40,000 people.¹⁰¹ Sewage discharged into Class "B" water need have only 10 percent of the suspended solids removed.

Classification of water was completed in 1938, and the ISC began enforcement action in the same year.¹⁰² An enforcement action begins with a public hearing in which the ISC investigates the circumstances surrounding a particular waste discharge. As a result of this hearing the ISC may issue an order which specifies the degree of treatment required, and the date by which it must be provided.¹⁰³ To date the Commission has issued 54 such orders.¹⁰⁴

After an order has been issued, the ISC may investigate the degree of compliance. If it determines that satisfactory progress is not being made, it has the authority to obtain court enforcement.¹⁰⁵ It has had to make use of the courts twelve times, and in each instance the controversy has been resolved in its favor.¹⁰⁶

The jurisdictional boundaries of the ISC, as set forth in the compact, do not encompass the entire river basin,¹⁰⁷ but to the extent that a tributary of Commission waters lies within the boundaries of a signatory state, Article VIII gives it the authority to set waste treatment standards.¹⁰⁸ This ability

⁹⁶ CONN. GEN. STAT. ANN. §§ 25-55 to -65 (1958).

⁹⁷ Art. IV, 49 Stat. 933 (1935).

⁹⁸ Art. V, 49 Stat. 934 (1935).

⁹⁹ 49 Stat. 934 (1935).

¹⁰⁰ 49 Stat. 935 (1935).

¹⁰¹ See J. PERRY, *OUR POLLUTED WORLD—CAN MAN SURVIVE?* 80-82 (1967). For a definition of suspended solids and suspended organic matter, see T. CAMP, *WATER AND ITS IMPURITIES* 20, 37 (1963).

¹⁰² Interstate Sanitation Commission, *Highlights of Interstate Sanitation Commission Water Pollution Abatement Activities 1936-1967*, at 2 (1967) [hereinafter cited as *Highlights*].

¹⁰³ Art. X, 49 Stat. 936 (1935).

¹⁰⁴ *Highlights* 1.

¹⁰⁵ Art. XI, 49 Stat. 936 (1935).

¹⁰⁶ *Highlights* 1.

¹⁰⁷ The jurisdictional boundaries of the Commission are set forth in art. II, 49 Stat. 932 (1935).

¹⁰⁸ 49 Stat. 935 (1935).

stems from the requirement that the quality of a tributary of Commission waters meet the use classification established for the receiving waters at the point where they meet. It would seem that this provision is enforceable through court action, though no such action has occurred.

As was pointed out above, the ISC has been active in enforcing standards within the area for more than 30 years, and it lists many accomplishments in the upgrading of treatment facilities. Of the wastes presently discharged into Commission waters, 60 percent receive secondary treatment. On the other hand, an astounding 22 percent receive no treatment.¹⁰⁹ When the programs presently in the planning and construction stages are completed, supposedly by 1972, all wastes discharged will receive secondary treatment.¹¹⁰ The decision to require secondary treatment, as opposed to the lower level required in the compact, was reached by the states in 1965.¹¹¹ For several years before this, the ISC had urged that more than primary treatment be required. The decision by the states to follow this recommendation came after the Public Health Service began investigating the Hudson River.¹¹²

While the ISC has had some success in raising the level of treatment given wastes, it cannot at present point with pride to the condition of the waters. The 1965 Public Health Service study of the Hudson reported that the river could "be categorically described as polluted."¹¹³ Other areas within the jurisdiction of the Commission, Raritan Bay, Lower Bay, Sandy Hook Bay, and Arthur Kill, have been the subject of federal study for several years. These areas were also found to be very highly polluted; so polluted that the harvesting of shellfish therein has been banned for public health reasons.¹¹⁴

The report on the Hudson placed the responsibility for the high level of pollution on two principal sources. The first of these was the raw sewage discharged from New York City.¹¹⁵ A brief history of the relationship between New York City and the Commission will illustrate one of the Commission's major problems. In 1947 the Commission and New York City entered into a consent agreement whereby the City was to provide treatment facilities for its waste by 1959. In 1957, as the deadline approached, a new agreement was concluded under which the time was extended until 1967.¹¹⁶ These plants were scheduled finally to begin operation by 1968, more than

¹⁰⁹ See Highlights 1; ISC 1966 REPORT 3.

¹¹⁰ *Id.* at 9.

¹¹¹ *Id.* at 8.

¹¹² See U.S. PUBLIC HEALTH SERVICE, DEP'T OF HEALTH, EDUCATION, AND WELFARE, REPORT ON POLLUTION OF THE HUDSON RIVER AND ITS TRIBUTARIES (1965) [hereinafter cited as HUDSON REPORT].

¹¹³ HUDSON REPORT 1.

¹¹⁴ 2 CCH WATER CONTROL NEWS No. 3, June 5, 1967, at 3.

¹¹⁵ HUDSON REPORT 27. The second major source of pollution was the Passaic Valley sewage plant which was removed from the jurisdiction of the Commission by article XII of the compact. The report concluded that the conditions which are specified in the compact to remove this plant from the jurisdiction of the Commission are not being met, and therefore the Commission should assume authority to abate. HUDSON REPORT 21-22.

¹¹⁶ HUDSON REPORT 21.

20 years after the initial agreement was reached.¹¹⁷ One reason for this delay was that New York City was spending less than \$2,000,000 annually for pollution abatement. By 1966 the city was spending the more adequate sum of \$150,000,000.¹¹⁸

In the latter part of 1967 a second conference was held by the Federal Water Pollution Control Administration on the pollution problems of the Hudson River. The conclusion reached at the conference was that the programs presently under way, when completed, would eliminate most of the pollution from this area.¹¹⁹ A conference on Raritan Bay in the same year found that progress was being made, but more was needed. The states agreed that by 1972 they would install treatment facilities which would give adequate treatment to all wastes discharged, thus eliminating almost all of the pollutants from the bay.¹²⁰ A final assessment of the success of this agency will have to be delayed at least until the 1970's, but if the experience with New York City is an indication of the future, even this time period may extend into the next several decades.

D. Ohio River Valley Compact

Congress granted approval to begin formal negotiations for the Ohio River Valley Water Sanitation Compact in 1937.¹²¹ By 1940 a majority of the proposed member states had ratified the compact, and congressional consent had been obtained.¹²² Responsibility for administering the compact is given to the Ohio River Valley Water Sanitation Commission, referred to as ORSANCO.¹²³ It is composed of three commissioners from each state, and three representing the federal government.¹²⁴ Before an order may be issued by the Commission under the enforcement provisions of the compact, at least two representatives from a majority of the states must assent, and a majority of the commissioners from the state in which the affected entity is located must concur.¹²⁵

The authority granted ORSANCO is very similar to that granted to the Interstate Sanitation Commission, in that it has the ability to enforce the standards set in the compact¹²⁶ and set additional standards if needed.¹²⁷ The level of treatment required is affected by two provisions. The first is the basic requirement, specified in the compact, that all waste discharged into interstate streams be given a minimum of primary treatment.¹²⁸ ORSANCO

¹¹⁷ ISC 1966 REPORT, *supra* note 94, at 14, 20.

¹¹⁸ Highlights 5.

¹¹⁹ *Id.* at 9.

¹²⁰ *Id.*

¹²¹ 49 Stat. 1490 (1936).

¹²² Ohio River Valley Sanitation Compact, 54 Stat. 752 (1940). Member states are: Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia, and West Virginia. This compact has been the subject of a comprehensive study. See E. CLEARY, THE ORSANCO STORY (1967) [hereinafter cited as CLEARY].

¹²³ Art. III, 54 Stat. 753 (1940).

¹²⁴ Art. IV, 54 Stat. 753 (1940).

¹²⁵ Art. IX, 54 Stat. 755 (1940).

¹²⁶ Art. IX, 54 Stat. 755 (1940).

¹²⁷ Art. VI, 54 Stat. 754 (1940).

¹²⁸ Art. VI, 54 Stat. 754 (1940).

is given the authority to require a higher degree of treatment if it is necessary to make the water suitable for the uses set forth in article I of the compact.¹²⁹ To effectuate this provision the Commission divided the Ohio River into seven zones and in several of these set additional treatments requirements.¹³⁰ At the request of member states ORSANCO has also set additional treatment requirements for sewage discharged into several tributaries of the Ohio.¹³¹

In 1966 the Commission first adopted water quality criteria, based on the desired uses, for application to the river.¹³² These criteria set maximum levels for the presence of certain substances and are to be used in setting additional requirements if needed to make the water in an area suitable for a particular use.

The Commission also has the authority to set industrial waste treatment standards.¹³³ Activity in this area began with the establishment of minimum treatment standards for all industrial discharges. These were based on the requirement in article I which provides that all the waters in the area shall be maintained "free from unsightly or malodorous nuisances due to floating solids or sludge deposits"¹³⁴ Standards based on this section provide that all industrial discharges shall be treated to such a degree that the receiving waters remain free from anything that will settle and form sludge deposits, floating debris and scum, odor and color in amounts which would constitute a nuisance, and toxic substances.¹³⁵ The second step in controlling industrial pollution consisted of promulgating standards on the presence of particular substances. This first occurred in 1958 when the Commission passed a resolution on the control of chlorides.¹³⁶ A further implementation of this resolution occurred in 1960 when the Commission set maximum discharge levels for chlorides.¹³⁷ The Commission is presently working on standards to control acid mine drainage.¹³⁸

Another function of the Commission was the study of the pollution control laws of the member states.¹³⁹ In 1948 the Commission adopted a statement of policy in which it made clear that it intended to allow the individual states to handle pollution problems whenever possible.¹⁴⁰ To effectuate this policy the Commission entered into a study of the pollution control legislation of the member states. As a result of this study, several states made minor revisions in their laws, and one state, Kentucky, completely revised its laws.¹⁴¹

Although the Commission places primary responsibility for enforcement

¹²⁹ Art. VI, 54 Stat. 754 (1940).

¹³⁰ J. MCKEE & H. WOLF, *WATER QUALITY CRITERIA* 456-57 (State Water Quality Control Board, Pub. No. 3-A, 1963) [hereinafter cited as *WATER QUALITY CRITERIA*].

¹³¹ *Id.* at 457-58.

¹³² *CLEARY* 321-23.

¹³³ Ohio River Valley Sanitation Compact, art. VI, 54 Stat. 754 (1940).

¹³⁴ Art. I, 54 Stat. 753 (1940).

¹³⁵ *WATER QUALITY CRITERIA* 458-59.

¹³⁶ *Id.* at 459.

¹³⁷ *Id.*

¹³⁸ *CLEARY* 186.

¹³⁹ See Ohio River Valley Sanitation Compact, art. VIII, 54 Stat. 755 (1940).

¹⁴⁰ *CLEARY* 296-98.

¹⁴¹ *Id.* at 88.

of pollution control standards on the member states, the provisions of the compact grant it enforcement authority. The enforcement procedure consists of a hearing, issuance of an order and time schedule, and court enforcement of this order if necessary.¹⁴² ORSANCO has not exercised its enforcement authority as frequently as has the Interstate Sanitation Commission. It has made use of the authority on only six occasions, and in none of these was it forced to make use of the courts.¹⁴³ In each instance the intervention of ORSANCO has been at the express request of the state in which the polluter was located, and its mere intervention was sufficient to force compliance.¹⁴⁴

The member states, at the request of ORSANCO, have made use of a procedure which has proved to be very effective in forcing municipalities to install treatment facilities. This procedure consists of a state statute which prohibits the installation or change of a sewer system without first obtaining a permit from the appropriate state agency. Before the permit is issued, the agency may require the installation of suitable treatment facilities. This effectively blocks new construction in a city until treatment plants have been started, and places the burden of any court action on the municipality.¹⁴⁵

ORSANCO has experienced success in upgrading the level of treatment given to discharged wastes. When it first began operation, only 33 percent of the sewered population was served by treatment facilities.¹⁴⁶ This has increased to a present level of 94 percent, with 76.8 percent representing population served by "acceptable" treatment.¹⁴⁷ Industrial compliance with its program of abatement has also been successful. Eighty-eight percent of the industries in the area have installed treatment facilities which meet ORSANCO's minimum requirements.¹⁴⁸

The true measure of success of any pollution control program is the quality of the water. Analysis of the quality of the water within the jurisdiction of ORSANCO is facilitated by a network of monitoring stations. Many of these are of the robot-monitoring type which ORSANCO developed to provide a constant surveillance of water quality.¹⁴⁹ The results of this surveillance indicate that in many respects the waters of this area are in need of improvement. The presence of dissolved oxygen in the mainstream of the Ohio was at such a low level that in 1966 additional treatment standards were finally imposed.¹⁵⁰ These standards consisted primarily of the imposition of a requirement of secondary treatment.¹⁵¹ The overall condition of the Ohio and its tributaries still leaves much work to be done by the Commission. While there are many sectors in which the level of dissolved oxygen is very minimal,

¹⁴² Art. IX, 54 Stat. 755 (1940).

¹⁴³ CLEARY 117-22.

¹⁴⁴ See CLEARY 118-22 for a history of these enforcement actions.

¹⁴⁵ Discussion taken from CLEARY 122-24.

¹⁴⁶ CLEARY 103.

¹⁴⁷ OHIO RIVER VALLEY WATER SANITATION COMMISSION, NINETEENTH YEARBOOK 1967, at 30-31 (1967) [hereinafter cited as ORSANCO YEARBOOK].

¹⁴⁸ *Id.* at 31.

¹⁴⁹ See CLEARY 199-202 for a discussion of the development of these stations.

¹⁵⁰ ORSANCO YEARBOOK 15.

¹⁵¹ See *id.*

and the high level of acidity in the water indicates that the problem of acid mine drainage has not yet been solved,¹⁵² this compact must be rated as one of the most successful.

E. Tennessee River Basin Compact

The Tennessee River Basin Water Pollution Control Compact is closely connected with the Ohio compact in both its structure and its origin. Tennessee's ratification of the Ohio River Basin Sanitation Compact was contingent on ratification of the compact by Alabama and North Carolina.¹⁵³ In 1950, after these states had failed to ratify, a Stream Study Commission created by the Governor of Tennessee recommended that Tennessee enter the Ohio compact even though Alabama and North Carolina did not. It also recommended that Tennessee urge the formation of a separate compact to govern the Tennessee River Basin. The first of these recommendations was not accepted by the legislature, but the second resulted in the negotiation of a compact between the seven basin states through periodic meetings in the early 1950's.¹⁵⁴ In 1955 Tennessee enacted the final draft, and Mississippi and Kentucky followed within the next two years.¹⁵⁵ The consent of Congress was obtained in 1958,¹⁵⁶ but created a problem some authorities feel was responsible for the difficulties which followed.¹⁵⁷

The consent legislation of Congress contained a provision which limited the functions of the commission to those specifically enumerated in the compact.¹⁵⁸ This was the first time Congress had taken such action in regard to an interstate water pollution control compact. What effect this action had on approval of the compact by the other parties is not clear, but Alabama, Georgia, North Carolina, and Virginia have failed to approve and it does not appear likely that they will.¹⁵⁹ For this reason the agency created is not yet active.

The Tennessee River Basin Water Pollution Control Commission was to have been composed of three representatives from each state.¹⁶⁰ Any action by the Commission that would have affected a member state required approval of a majority of the commissioners from that state.¹⁶¹ The primary function of the Commission was to set waste treatment standards in order to achieve the purity requirements it set for various use classifications.¹⁶²

¹⁵² ORSANCO YEARBOOK contains a complete discussion of the condition of the main stream of the Ohio and its tributaries at 11-29.

¹⁵³ TENN. CODE ANN. § 70-401 (1955).

¹⁵⁴ Letter from Harold V. Miller, Executive Director, Tennessee State Planning Commission, to the *U.C.D. Law Review*, Oct. 23, 1967.

¹⁵⁵ *Id.*

¹⁵⁶ Tennessee River Basin Water Pollution Control Compact, 72 Stat. 823 (1958).

¹⁵⁷ Leach, *The Federal Government and Interstate Compacts*, 29 *FORDHAM L. REV.* 421, 434 (1961).

¹⁵⁸ Art. XIV, §§ 4-5, 72 Stat. 829 (1958); see Hines, *supra* note 31, at 443-44.

¹⁵⁹ Letter from Harold V. Miller, Executive Director, Tennessee State Planning Commission, to the *U.C.D. Law Review*, Oct. 23, 1967.

¹⁶⁰ Art. IV, 72 Stat. 823 (1958).

¹⁶¹ Art. V(D), 72 Stat. 824 (1958).

¹⁶² Art. VII(B), 72 Stat. 825 (1958).

The individual states were to be responsible for classifying the interstate waters within their jurisdictions according to the proposed use.¹⁶³ If there was a violation of the treatment standard, it was to be reported to the Commission by one of the state water pollution control agencies. If the Commission found, after investigation, that a violation did exist it could recommend to the appropriate state agency a procedure for correction. If this recommendation was not followed within a reasonable time, the Commission had the authority to hold a hearing and issue an order to abate along with a schedule for abatement.¹⁶⁴ This order was both enforceable and reviewable by a court of competent jurisdiction.¹⁶⁵

F. Klamath River Compact

In 1953 the California legislature authorized formation of the Klamath River Commission. Its function was to cooperate with a similar body established by Oregon in drafting an interstate compact to govern the waters of the Klamath River Basin.¹⁶⁶ Congress gave consent to these negotiations in 1955,¹⁶⁷ one year before a final draft was agreed on by the negotiating parties. In 1957 this draft was approved by the legislatures of the two states, and was consented to by Congress.¹⁶⁸

The compact created the Klamath River Compact Commission and granted it authority to act in the area of water pollution control.¹⁶⁹ The Commission is made up of one commissioner from each of the member states and one nonvoting member appointed by the President.¹⁷⁰ Before the Commission takes action, the commissioner from each state must approve,¹⁷¹ and in the event they are unable to agree, the compact provides for the appointment of an arbitration forum.¹⁷² This forum consists of one arbitrator appointed by each commissioner, and a third appointed by the two arbitrators. A majority vote by the forum can bind a member state, subject to court review.¹⁷³

Primary responsibility for pollution control in the basin is left to the individual states.¹⁷⁴ The function of the Commission is to recommend regulations and minimum standards to the respective states,¹⁷⁵ but to date nothing has been done in this area.¹⁷⁶ The enforcement power of the commission

¹⁶³ Art. VII(B), 72 Stat. 825 (1958).

¹⁶⁴ Art. VIII(A), 72 Stat. 825 (1958).

¹⁶⁵ Art. VIII(B), 72 Stat. 826 (1958).

¹⁶⁶ Cal. Stat. 1953, ch. 1473, at 3085 (repealed 1959).

¹⁶⁷ 69 Stat. 613 (1955).

¹⁶⁸ Klamath River Basin Compact, 71 Stat. 497 (1957).

¹⁶⁹ Art. VII, 71 Stat. 501 (1957). The provisions of the compact also cover other areas of water resource administration, including apportionment of the waters of the river, art. III, and the development of hydroelectric power, art. IV.

¹⁷⁰ Art. IX(A)(1), 71 Stat. 502 (1957).

¹⁷¹ Art. IX(A)(2), 71 Stat. 502 (1957).

¹⁷² Art. IX(A)(10), 71 Stat. 504 (1957).

¹⁷³ Art. IX(A)(10), 71 Stat. 504 (1957).

¹⁷⁴ Art. VII(C), 71 Stat. 501 (1957).

¹⁷⁵ Art. VII(B)(1), 71 Stat. 501 (1957).

¹⁷⁶ Letter from Robert B. Bond, Executive Director, Klamath River Compact Commission, to the *U.C.D. Law Review*, Oct. 25, 1967.

comes into play when one state complains to the commission that the other is not abating a source of interstate pollution.¹⁷⁷ Upon receiving a complaint the commission holds a conference with the water pollution control agencies of the two states, after which it may recommend corrective measures.¹⁷⁸ If these measures are not taken within a reasonable time, the Commission may use the hearing-order-court enforcement procedure to compel compliance.¹⁷⁹ To date none of these procedures has been used by the Commission,¹⁸⁰ but when a study by the Federal Water Pollution Control Administration is completed the need may arise. This study concerns the presence of pesticides and is being made at the Commission's request.¹⁸¹ When the study is completed it may provide the first test of this agency's ability to handle an interstate pollution problem.

G. Potomac River Basin Compact

The Potomac River Basin Sanitation Compact is the oldest of the compacts which deal primarily with water pollution, yet grant no real authority to the compact agency.¹⁸² Unlike ORSANCO and the Interstate Sanitation Commission, the Interstate Commission on the Potomac River Basin has no authority to set or enforce standards. Its authority consists of the ability to study the sources and effects of pollution, report on its presence within the basin, and recommend minimum standards for water quality and sewage treatment to the member states.¹⁸³ It cannot compel a member state to enact these recommendations, or to enforce the standards once set. Even the recommendations must have the approval of two of the three commissioners from the affected state.¹⁸⁴

In 1946 the Commission first promulgated water quality criteria based on desired uses.¹⁸⁵ It also determined what use classifications different sectors

¹⁷⁷ Art. VII(C), 71 Stat. 501 (1957). Interstate pollution is defined in the compact as "the deterioration of the quality of the waters of the Upper Klamath River Basin within the boundaries of such state which materially and adversely affects beneficial uses of waters of the Klamath River Basin in the other state." Art. VII(C).

¹⁷⁸ Art. VII(C)(1), 71 Stat. 501 (1957).

¹⁷⁹ Art. VII(C)(2)-(3), 71 Stat. 502 (1957).

¹⁸⁰ See letter, *supra* note 176.

¹⁸¹ Federal Water Pollution Control Administration, U.S. Dep't of the Interior, Klamath Basin Study (Publication No. WP-9) (no date).

¹⁸² Potomac River Basin Sanitation Compact, 54 Stat. 748 (1940). Consent to enter into negotiations for this compact was granted by Congress in 1937, 50 Stat. 884 (1937). The signatory states to this compact, and the years in which they approved are: Virginia 1940, Maryland and the District of Columbia 1941, and Pennsylvania 1945.

¹⁸³ Art. II, 54 Stat. 749-50 (1940).

¹⁸⁴ Art. I(D), 54 Stat. 749 (1940).

¹⁸⁵ These criteria consisted of four different classifications for the water within the basin established with reference to the desired uses. The highest use is water fit for public consumption with no treatment except chlorination. At the other end of the scale was water fit for navigation and not creating a public nuisance. For water to be suitable for a particular use it had to meet certain levels for seven different requirements: coliform bacteria, color, turbidity, pH, presence of dissolved oxygen, presence of 5-day biochemical oxygen demanding wastes, and "other requirements" such as the absence of toxic or floating substances. WATER QUALITY CRITERIA, *supra* note 130, at 463-64.

of the river presently met, and listed tentative future classifications.¹⁸⁶ In 1958 the Commission first recommended use classifications for the Washington, D.C. area. These varied from water suitable for domestic water supply to water suitable for boating, safe passage of all types of fish, and "propagation of the hardier types."¹⁸⁷

In 1960 an amendment was proposed¹⁸⁸ and was adopted by Maryland,¹⁸⁹ requiring each state to classify the water within its jurisdiction, and submit these classifications to the Commission for approval.¹⁹⁰ Enforcement of the classifications was left to the individual states. The principal effect of the amendment was to make the classification of waters mandatory. The amendment was also approved by West Virginia and Pennsylvania and given tentative approval by the District of Columbia.¹⁹¹ In 1962 the legislature of Virginia failed to approve the amendment,¹⁹² and it seems doomed since the states have subsequently negotiated the compact previously discussed.¹⁹³

The Commission can point to a vast array of figures which indicate the success it has had in abating pollution in this area. In 1940 when the compact first became effective, only nine percent of the population was served by secondary treatment facilities. Seventy-five percent of the population had minimal treatment facilities, and fifteen percent discharged raw waste.¹⁹⁴ In 1965 these figures had changed to the extent that 88 percent of the population was served by secondary treatment, eleven percent had minimal treatment, and only one percent discharged raw waste.¹⁹⁵ In the area of industrial treatment the figures also indicate substantial improvement.¹⁹⁶ Within the next few years, with completion of new sewage treatment plants now under construction, 97 percent of the sewered population will be served by secondary treatment.¹⁹⁷

Looking at the waters of the lower Potomac River one would not guess that the Commission had enjoyed this degree of success. "A *Washington Post* editorial at the end of 1964 deplored the steady flow of sewage from our capital into the Potomac River because of obsolete treatment plants. 'The odor is objectionable . . . ' "¹⁹⁸ The 1965 report of the Commission comments, "Even now the quality of the lower River near Washington does not encourage water contact sport and the quality of water in the North Branch does not permit of significant industrial expansion along that waterway."¹⁹⁹

¹⁸⁶ *Id.* at 463.

¹⁸⁷ *Id.* at 451-53.

¹⁸⁸ For text of proposed amendment, see PA. STAT. ANN. tit. 32, § 741 (1967).

¹⁸⁹ MD. ANN. CODE art. 43, § 407 (1965).

¹⁹⁰ Art. II(F)(2), PA. STAT. ANN. tit. 32, § 741 (1967).

¹⁹¹ INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN, TWENTY-FIFTH ANNUAL REPORT 18 (1965) [hereinafter cited as POTOMAC REPORT].

¹⁹² *Id.*

¹⁹³ See text accompanying notes 89-90 *supra*.

¹⁹⁴ POTOMAC REPORT 2.

¹⁹⁵ *Id.* at 3.

¹⁹⁶ *Id.* at 2.

¹⁹⁷ *Id.* at 13.

¹⁹⁸ GRAHAM, *supra* note 7, at 19.

¹⁹⁹ POTOMAC REPORT 13. This should not seem surprising since the use classification set for the lower river near Washington is lower than the use classification for water sports. WATER QUALITY CRITERIA, *supra* note 130, at 452.

A report in 1966 by the Potomac River Basin Advisory Committee concluded that:

This part of the river, [the Washington area] which is precisely the reach that could be most useful and enjoyable for the greatest concentration of people in the Basin, is rendered unfit for swimming and other water sports and inhospitable to fish by bacterial contamination, low dissolved oxygen at times, silt, debris, and heavy growths of unsightly green algae stimulated by nutrients that are released into the water from treatment plants and other sources.²⁰⁰

Perhaps the best expression of the condition of this river, and the other rivers associated with the modern Megalopolis, is contained in an essay on the Potomac by John Graves:

In the upper estuary below the fall line, where the river's current butts against the stubborn bulk of the tidewater, this invisible load moves lazily and blends with the surplus treasure of metropolitan sewers to nourish a truly magnificent algae bloom whose emerald tint and delicate stink enhance the widening river for miles and miles below the metropolis, down through the reaches where the Washingtons and the Masons and the Diggeses and their planter peers sailed shallops on lordly visits to and fro. Here in summer now the loud ski-boats of the brave spew verdant rooster-tails, and hardy youngsters who live along the shore emerge from swims shouting: "I am the green monster from the deep!"

....

These are only the dramatic spots; in most of the Basin the dirtiness is less apparent and the shorelines have green and rolling beauty just about anywhere you look. If you have seen other rivers associated with Megalopolis, and their shores, you tend to be grateful for the Potomac.²⁰¹

H. New England Interstate Compact

Mr. Graves may have had in mind rivers under the jurisdiction of the New England Interstate Water Pollution Control Commission when he advised gratitude for the condition of the Potomac. One expert has said of this compact, "The New England Interstate Water Pollution Control Commission has been a flat failure, as any objective look at the polluted streams of that region will disclose."²⁰² While this may be an overstatement, the Commission has not enjoyed great success in its program of pollution abatement. One of the major rivers in this area, the Connecticut, has been described as "the world's most beautifully landscaped cesspool."²⁰³ In 1964 the Public Health Service found that at the point where this river crosses the state line, the

²⁰⁰ POTOMAC RIVER BASIN ADVISORY COMMITTEE, FEDERAL INTERDEPARTMENTAL TASK FORCE ON THE POTOMAC, POTOMAC INTERIM REPORT TO THE PRESIDENT 9 (1966).

²⁰¹ *Id.* at 59.

²⁰² GRAHAM, *supra* note 7, at 218.

²⁰³ *Hearing on S. 2460 Before the Subcomm. on Parks and Recreation of the Senate Comm. on Interior and Insular Affairs*, 89th Cong., 2d Sess. 20 (1966).

bacteria count is 315 times greater than the maximum used by Connecticut in approving bathing sites.²⁰⁴ Another river in this area, the Androscoggin, was the subject of a comprehensive study by the United States Public Health Service in 1962. Reporting on the condition of this river, the Service said, "The pollution assimilation capacity of the river is so utilized that the quality is maintained at a level that will just prevent the development of obnoxious conditions."²⁰⁵

Explanation of the failure of this compact may partially lie in the limited grant of authority to the New England Interstate Water Pollution Control Commission.²⁰⁶ The responsibilities of the Commission consist of establishing use classifications and corresponding water quality criteria.²⁰⁷ It is the duty of the individual states to classify the waters within their jurisdictions, and enforce the requirements established by the Commission. The classifications set by the states must be submitted to the Commission for approval, and any state which would be affected may veto a proposed classification if it feels that it is not sufficient to insure acceptable water quality.²⁰⁸ The Commission has no authority to compel a state to classify its waters for a particular use, or to enforce the standards set. This has resulted in an inordinately long time period for agreement on classifications for the various streams. This agency has been in existence for over twenty years, and as of June 1967, the states had not agreed on classifications for eleven streams within the area.²⁰⁹ One of these is the upstream portion of the Connecticut River.²¹⁰

Another factor contributing to the lack of success is the number of interstate basins within the jurisdiction of the Commission. While other interstate agencies are responsible for one river basin, this agency is responsible for all of the interstate basins within the New England area.²¹¹ The Commission

²⁰⁴ *Hearings on S. 649, H.R. 3166, H.R. 4571, H.R. 6844 Before the House Comm. on Public Works*, 88th Cong., 1st & 2d Sess. 297 (1964).

²⁰⁵ U.S. PUBLIC HEALTH SERVICE, DEP'T OF HEALTH, EDUCATION, AND WELFARE, CONFERENCE IN THE MATTER OF POLLUTION OF THE INTERSTATE WATERS OF THE ANDROSCOGGIN RIVER 37 (1962).

²⁰⁶ New England Interstate Water Pollution Control Compact, 61 Stat. 682 (1947). The signatory states to this compact are: Connecticut, Maine, New Hampshire, New York, Rhode Island, Massachusetts, and Vermont. Consent to begin formal negotiations for this compact was given by Congress in 1936. 49 Stat. 1490 (1936).

²⁰⁷ Art. V, 61 Stat. 683 (1947). These standards are set forth in New England Interstate Water Pollution Control Commission, General Policy, Classification and Standards of Quality for Interstate Waters (1967).

²⁰⁸ Art. V, 61 Stat. 683 (1947); *Hearings Before the Special Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works*, 89th Cong., 1st Sess., pt. 1, at 297 (1965). Any action by the Commission which imposes an obligation on a member state, or subdivision thereof, must have the approval of majority of the commissioners from that state. Art. IV, 61 Stat. 683 (1947).

²⁰⁹ For a listing of the streams which have been classified as of June 30, 1967, see NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION, REPORT TO THE GOVERNORS OF SIX NEW ENGLAND STATES AND NEW YORK 13 (1966). Subsequent to this date seven streams have been classified. See, Letter from Alfred E. Peloquin, Executive Secretary, New England Interstate Water Pollution Control Commission, to the *U.C.D. Law Review*, Feb. 26, 1968.

²¹⁰ Another major river under this jurisdiction, the Androscoggin, was not classified until early 1968. See letter, *supra* note 209.

²¹¹ Art. I, 61 Stat. 682 (1947).

is therefore not able to concentrate its efforts in the abatement of pollution in a single river basin, a task which has proved to be too great for many interstate agencies, but must attempt to control pollution in over 25 basins.

I. Arkansas River Basin Compact

Although Congress gave consent to begin formal negotiations for the Arkansas River Basin Compact in 1955,²¹² it was not until 1966 that the states were able to agree on an acceptable document.²¹³ While this may seem an inordinately long period of time in view of the limited power given to the Commission in the area of water pollution control, it may be partially explained by the fact that this compact also apportions the waters of this river.²¹⁴

The compact grants the Kansas-Oklahoma Arkansas River Commission less authority than any agency yet discussed. The function of the Commission is to study pollution problems in that area, report its findings to the appropriate state agencies, and coordinate the pollution control activities of the member states.²¹⁵ In the event that the two states are unable to solve a pollution problem through the Commission, the compact provides that the provisions of the Federal Water Pollution Control Act are to be utilized to abate the pollution.²¹⁶

Due to the comparatively short period of time in which the Commission has been in existence, no evaluation of its success can be made. It is possible, however, to predict the chances of its success by examining the principal sources of pollution in the area. In 1964 the Public Health Service completed a comprehensive study of the Arkansas-Red River Basin.²¹⁷ It concluded that the major pollutants in the area were sodium and sulfate compounds.²¹⁸ The sources of these compounds were natural (springs, salt-encrusted flats) and man-made (results of petroleum and natural gas production), with each responsible for approximately half of the compounds present.²¹⁹ Abatement of the natural sources of pollution will not involve forcing economic or political interests to install treatment facilities, and, therefore, the limited provisions of this compact may be able to solve this part of the pollution problem. The petroleum and natural gas industries are presently controlling 95 percent of the brines they produce.²²⁰ This would seem to indicate that either the industry realizes its responsibilities for pollution control, or that the individual states are able and willing to act. In either case the provisions of the compact relating to cooperation may be sufficient to solve the present man-made pollution problem.

²¹² 69 Stat. 631 (1955).

²¹³ 80 Stat. 1409 (1966). Member states are Kansas and Oklahoma.

²¹⁴ Arts. I, IV-VIII, 80 Stat. 1410-12 (1966).

²¹⁵ Art. XI, 80 Stat. 1413 (1966).

²¹⁶ Art. IX(E), 80 Stat. 1412 (1966).

²¹⁷ U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, PUBLIC HEALTH SERVICE, ARKANSAS-RED RIVER BASINS—WATER QUALITY CONSERVATION (1964).

²¹⁸ *Id.* at 2, 3.

²¹⁹ *Id.* at 2.

²²⁰ *Id.*

While the compact agency may be able to alleviate the pressing pollution problems, it has no authority to plan or implement a long range program. Responsibility for assuring that pollution will not be a problem in the future is left to the individual states, a group which does not have a past record of great accomplishment.

J. Columbia River Basin Compact

The proposed Columbia River Basin Compact is similar to the Arkansas compact in the authority granted to the Commission for water pollution control. Negotiations for this compact began in 1951,²²¹ but the basin states have not yet been able to agree on an acceptable document. The first proposal was negotiated in 1960 and was given approval by the legislatures of all states except Oregon and Washington.²²² The refusal by these two states to accept this draft led to a new (also unacceptable) proposal in 1962.²²³ It does not appear likely that a compact governing the water resources of this basin will become effective in the near future.²²⁴

Both of the proposed drafts had relatively limited provisions pertaining to pollution control, the authority of the Commission being limited to investigatory and recommendatory functions. It could hold hearings on pollution problems, but had to rely on action by the individual states to correct any problems uncovered.²²⁵ The principal cause of delay and ultimate rejection was that this compact dealt with water apportionment.²²⁶

K. Great Lakes Basin Compact

The only other existing interstate compact dealing expressly with water pollution control is the Great Lakes Basin Compact.²²⁷ The Great Lakes Commission, created by this compact, came into existence in 1955 when five of the eight basin states ratified a compact negotiated under the direction of the Council on State Governments.²²⁸ Approval by all of the basin states did not occur until 1963, and approval by Congress was not obtained until 1968.²²⁹ The functions of the Great Lakes Commission are virtually the same as those of the Arkansas Commission in that it is to study the pollution

²²¹ See Idaho Sess. Laws of 1951, ch. 61, § 1, at 89.

²²² Idaho Sess. Laws of 1961, ch. 91, § 1, at 125 (repealed 1963); MONT. REV. CODES ANN. §§ 89-3201 to -07 (1964); NEV. REV. STAT. § 538.530 (1967); UTAH CODE ANN. §§ 73-19-6 to -10 (Supp. 1967); Wyo. Sess. Laws of 1961, ch. 188, at 332 (repealed 1963).

²²³ IDAHO CODE ANN. § 42-3403 (Supp. 1967).

²²⁴ Letter from Kenneth H. Spies, Secretary and Chief Engineer, Oregon State Sanitary Authority, to the *U.C.D. Law Review*, Dec. 26, 1967.

²²⁵ Art. VIII sets forth the authority of the commission in the area of water pollution control. IDAHO CODE ANN. § 42-3403 (Supp. 1967).

²²⁶ This conclusion is drawn from the fact the differences between the two drafts are in the area of apportionment.

²²⁷ For text of compact see N.Y. CONSERV. LAW §§ 815-22 (McKinney 1967). Other member states are: Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin.

²²⁸ Great Lakes Basin Commission, 10th Anniversary 1955-1965 (1965).

²²⁹ 82 Stat. 414 (1968).

problems of the area and recommend legislation to the interested parties. It has no authority to compel action by a state.²³⁰ The successes to which the Commission lays claim consist entirely of urging legislation to the states and the Federal Government.²³¹

The present condition of the Great Lakes demonstrates the need for further action in this area. Federal Water Pollution Control Agency studies of Lakes Erie and Michigan point out the deteriorated condition of these important resources.²³² Beaches on Lake Erie have had to be closed at different times due to high bacteria levels.²³³

Future action in this area may come from the federal government, as there has been recent congressional interest in the Great Lakes. The fact that a necessary party to an effective pollution control program would be the country of Canada also indicates the likelihood of federal involvement.

III. CONCLUSION

In the last several years there has been a renewed interest in the use of interstate water pollution control compacts. The reasons include the realization by the states that a regional approach to water pollution is mandatory for effective control, the increasing incidence of water pollution in interstate rivers, and a fear that the federal government will preempt the field if action is not taken. However, the faith which the states place in this device cannot be justified by the success of interstate agencies which have had time to prove themselves. "A few agencies have enjoyed some success in effecting an overall improvement of the waters in their region, but for the most part, achievement must be rated in terms of how much worse things could be rather than how good they are."²³⁴

The particular attributes of the individual compacts account, to a certain extent, for this failure. Both the Ohio and the Tri-State compacts, for example, have a voting requirement which would seem to reduce their effective-

²³⁰ See art. VI, N.Y. CONSERV. LAW, § 815 (McKinney 1967).

²³¹ The commission lists the following accomplishments in the area of pollution control: "Spearheaded effort to have referred to IJC problem of pollution of Lake Erie and Lake Ontario and the international section of the St. Lawrence River. . . . Supported passage of the Water Quality Act of 1965—PL 89-234. Urged development of the Model Harbor Sanitation Code. . . . Pointed out the need for each port city on the Great Lakes to provide for the sanitary handling of refuse from pleasure craft and commercial ships." Great Lakes Basin Commission, 10th Anniversary 1955-1965 (1965).

²³² U.S. DEP'T OF THE INTERIOR, FEDERAL WATER POLLUTION CONTROL ADMINISTRATION, A COMPREHENSIVE WATER POLLUTION CONTROL PROGRAM, LAKE MICHIGAN BASIN, MILWAUKEE AREA i-ii (1966); U.S. DEP'T OF THE INTERIOR, FEDERAL WATER POLLUTION CONTROL ADMINISTRATION, A COMPREHENSIVE WATER POLLUTION CONTROL PROGRAM, LAKE MICHIGAN BASIN, GREEN BAY AREA at i-ii (1966); 2 U. S. DEP'T OF THE INTERIOR, FEDERAL WATER POLLUTION CONTROL ADMINISTRATION, PROCEEDINGS, THIRD MEETING IN THE MATTER OF POLLUTION OF LAKE ERIE AND ITS TRIBUTARIES, 431-32 (1966).

²³³ 2 U.S. DEP'T OF THE INTERIOR, FEDERAL WATER POLLUTION CONTROL ADMINISTRATION, PROCEEDINGS, CONFERENCE IN THE MATTER OF POLLUTION OF LAKE ERIE AND ITS TRIBUTARIES 430 (1965).

²³⁴ HINES, *supra* note 31, at 453.

ness.²³⁵ Each state has the ability to veto any commission action. Experts, however, maintain that the requirement does not present a problem to the commission.²³⁶

Another problem which confronts several agencies is the lack of authority to set or enforce any standards. These agencies act as forums where the individual states meet to agree on a standard acceptable to all. Each standard is, in effect, a separate compact, and the result often is a standard tailored to the lowest common denominator. The authority to set standards, however, does not mean that the agency will set them at a higher level. Until quite recently the standards set by the Interstate Sanitation Commission and ORSANCO were not appreciably higher than those set by the Potomac River Basin Commission.²³⁷

Moreover, the ability to enforce standards does not necessarily mean that an agency will be successful. One reason for this is the reluctance of agencies to use this power. "Existing interstate pollution control agencies can hardly be said to have distinguished themselves through their vigorous enforcement activities."²³⁸ One explanation of this, in regard to the Ohio compact, is the policy of ORSANCO to rely on persuasion.²³⁹ This policy, however, seems less than completely effective, as only about 77 percent of the sewage discharged in this region is treated according to the standards originally set.²⁴⁰

The fact that an interstate agency can not enforce the standards agreed upon by the member states does not mean that an individual state can not do so. Since standards are promulgated under an interstate water pollution control compact, a member state can institute court proceedings against a polluter in a federal district court to compel compliance.²⁴¹ The fact that this has never occurred points to the conclusion that the inability to enforce standards is not the primary problem.

Measuring success in terms of the level of treatment given to discharged wastes, the ability to set and enforce standards does not insure an agency that it will be more successful than an agency lacking this ability. The Potomac River Basin Commission has succeeded in obtaining an overall higher level of treatment for wastes discharged than has either the Interstate Sanitation Commission or ORSANCO.²⁴²

Although the above mentioned defects create problems for the interstate agencies, the principal reason they have failed is that the individual states and their citizens do not want to pay for water pollution control. With the ever increasing costs of governmental services, waste treatment facilities

²³⁵ See text accompanying notes 98 and 125 *supra*.

²³⁶ HINES, *supra* note 31, at 451-52.

²³⁷ Compare text accompanying notes 100-01 (Tri-State) *supra*, and text accompanying notes 128-31 (ORSANCO) *supra*, with text accompanying notes 185-97 (Potomac) *supra*.

²³⁸ HINES, *supra* note 31, at 451.

²³⁹ *Id.*

²⁴⁰ See text accompanying note 147 *supra*.

²⁴¹ See text accompanying note 50 *supra*.

²⁴² Compare text accompanying note S109 (Tri-State) and 147 (ORSANCO) *supra* with text accompanying note 195 (Potomac) *supra*.

have occupied a position of low priority for the average citizen. Many people fear that by forcing industries to install treatment facilities either the cost would be passed on to the consumer in the form of higher prices, or the industry would discontinue business in their present location. The position of many is, "Sure I'm for clean water, but I would rather keep my job at the factory." Contributing to the unwillingness to pay for treatment facilities is the availability of water from other sources to replace hopelessly polluted water. Instead of cleaning the local river, it has been easier to import water from elsewhere, or to use ground water supplies. As the supply of clean water decreases, however, the need to make the now polluted water available for use will become crucial.

Three events which have occurred since 1960 will have a great impact upon the use of the interstate water pollution control compact. The first of these is the "discovery" of the federal-state compact. By making use of this legal structure the states can coordinate their water pollution control activities with those of the various federal agencies. In addition, federal-state compacts provide another way in which the states can utilize the financial and legal resources of the federal government.

The increasing role played by the federal government in water pollution control is a second factor which will affect interstate compacts. The requirement that the states set acceptable water quality criteria for interstate waters²⁴³ may overcome one of the pollution control compact's problems, the failure to set meaningful standards. It was after the enactment of the Federal Water Quality Act of 1965 that both ORSANCO and the Interstate Sanitation Commission raised the level of treatment required for sewage discharges.²⁴⁴ This could have been coincidence, but it is more likely that these agencies realized that their continuing failure to act would result in complete federal control.

Equally as important as federal action is the enactment for the first time of a compact which deals with all of the water resource problems of a basin. Within the provisions of the Delaware River Basin Compact, the commission can regulate the various interrelated aspects of water resources management.²⁴⁵ Under these provisions it is not necessary for the commission to attempt to separate the closely related aspects of water quality from water quantity, or water quantity from the production of hydroelectric power. In the past, interstate agencies have taken advantage of regional management only so far as it applies directly to pollution control. The Delaware River Basin Compact is the natural extension of this approach to the entire area of water resources administration. With the enactment of the Tahoe Regional Planning Compact, the regional approach will be taken one step further to include those activities which occur on the land, but have an inseparable effect on water quality.

²⁴³ Water Quality Act of 1965, 79 Stat. 903, 907-09.

²⁴⁴ See text accompanying note 111 (Tri-State); text accompanying note 132 (ORSANCO) *supra*.

²⁴⁵ See text accompanying notes 78-79 *infra*.

The Tahoe Regional Planning Compact has been enacted by both California²⁴⁶ and Nevada,²⁴⁷ but congressional consent has not yet been obtained. The compact calls for the formulation of a regional plan within fifteen months after the agency is formed.²⁴⁸ This plan is to encompass land use, transportation, conservation of natural resources, recreation, and governmental services.²⁴⁹ The Tahoe Regional Planning Agency is given authority to adopt all necessary ordinances, rules, and regulations to implement the regional plan,²⁵⁰ including standards relating to water purity and clarity, solid waste disposal, sewage disposal, zoning, harbors, and shoreline developments.²⁵¹ These ordinances may be enforced by both the regional agency and the respective states and their political subdivisions.²⁵² Enforcement may be through civil or criminal actions,²⁵³ and a violation of an ordinance promulgated by the agency is specifically declared to be a misdemeanor.²⁵⁴ The likelihood that this type of compact will become widespread in the large river basins, however, seems small, since it may easily be argued that the interstate agency is the wrong unit of government to be responsible for land-use regulation.

The interstate compact has not as yet been able to take full advantage of the opportunities offered by a basin-wide approach to water pollution control. Developments in recent years, the growing concern on the part of the public for clean water, and the new wave of pollution control compacts may for the first time allow a governmental unit, based entirely on a problem area, to succeed.

Paul T. Chambers

²⁴⁶ CAL. GOV'T CODE § 66801 (Deering Supp. 1969).

²⁴⁷ NEV. REV. STAT. § 277.200 (1967).

²⁴⁸ Art. V(b).

²⁴⁹ Art. V(b).

²⁵⁰ Art. VI(a).

²⁵¹ Art. VI(a).

²⁵² Art. VI(b).

²⁵³ Art. VI(b).

²⁵⁴ Art. VI(F). For discussion of the present state of the waters of the Lake Tahoe basin, and the considerations which influenced the enactment of this compact, see U. S. DEPT OF THE INTERIOR, FEDERAL WATER POLLUTION CONTROL ADMINISTRATION, CONFERENCE IN THE MATTER OF POLLUTION OF THE INTERSTATE WATERS OF LAKE TAHOE AND ITS TRIBUTARIES (1966); Lake Tahoe Joint Study Committee, Report and Recommendations (March 1967).