

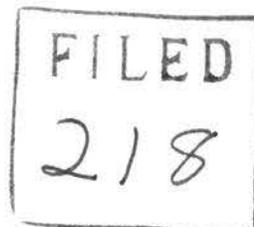
CLEAN AIR:  
AIR CONSERVATION:

The Missouri Air Conservation Commission does not have the authority under Chapter 203, V.A.M.S., to prevent the construction of "complex sources" when it is determined that such sources may indirectly cause ambient air quality standards to be violated.

OPINION NO. 218

August 21, 1973

Harvey D. Shell, P.E.  
Executive Secretary  
Air Conservation Commission  
117 Commerce Drive  
Jefferson City, Missouri 65101



Dear Mr. Shell:

This is in response to your request for an official opinion of this office concerning the question whether the Missouri Air Conservation Commission has the authority to prevent the construction of "complex sources" when it is determined that such sources may indirectly cause ambient air quality standards to be violated.

You have advised that your request is prompted by recent amendments to Part 51 of Chapter I, Title 40, Code of Federal Regulations, promulgated by the Administrator of the Environmental Protection Agency pursuant to the Clean Air Act, 42 U.S.C. 1857 et seq. which deal with the maintenance of national ambient air quality standards. Federal Register, Vol. 38, No. 116 - June 18, 1973. One purpose of the regulations is set out in Section 51.11 (a) (4) as follows:

"Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of the national standard."

The regulations then put the burden on the state and local air pollution control agencies to attain this purpose, primarily by the review of construction plans of such facilities with the power to deny and prevent such construction if it will prevent meeting the ambient air quality standards.

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There is no use of the term "complex sources" in the federal regulations but you have characterized such a source as "a large supermarket, airport, sports arena, drive-in theatre, etc., which attracts many people, and sometimes causes unnecessary traffic congestion." This is based on Section 51.18(a) of the regulations which provide:

"Each plan shall set forth legally enforceable procedures which shall be adequate to enable the State or a local agency to determine whether the construction or modification of a facility, building, structure, or installation, or combination thereof, will result in violations of applicable portions of the control strategy or will interfere with attainment or maintenance of a national standard either directly, because of emissions from it, or indirectly, because of emissions resulting from mobile source activities associated with it." (emphasis supplied)

Appendix O to the regulations elaborates on what types of facilities would be included and in addition to examples stated in your letter include highways and major parking facilities.

Thus, even though the facility itself would not have emissions interfering with the national ambient air quality standards, if there was sufficient motor vehicle traffic connected with the facility interfering with the national standards, then the federal regulations would require denial of construction of the facility. However, approval of construction does not relieve the owner of responsibility. Subsection (d) of Section 51.18 of the federal regulations reads:

"Such procedures shall provide that approval of any construction or modification shall not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy."

Thus, we come to your question of whether the Commission has the authority under state law to accomplish the federal regulatory scheme.

Section 203.030, V.A.M.S., of the Missouri Air Conservation Law sets out the intent of the law and reads in part:

"The discharge into the ambient air of air contaminants so as to cause or contribute to air

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pollution is contrary to the public policy of Missouri and in violation of this chapter.  
. . ."

The Commission's powers are set out in Section 203.050, V.A.M.S., and include the power to adopt rules and regulations, including but not limited to:

"(a) Regulation of use of equipment known to be a source of air contamination; and

"(b) Establishment of maximum quantities of air contaminants that may be emitted from any air contaminant source;"

Section 203.075, V.A.M.S., provides for construction permits, reading in part:

"1. It shall be unlawful for any person to commence construction of any air contaminant source in this state after August 13, 1972 without a permit therefor, if such source is of a class fixed by regulation of the commission which requires a permit therefor.

\* \* \*

"3. Before issuing a permit to build or enlarge an air contaminant source the executive secretary shall determine if the ambient air quality standards in the vicinity of the source are being exceeded and shall determine the impact on the ambient air quality standards from the source. The executive secretary, in order to effectuate the purposes of this act, may deny a permit if the source will appreciably affect the air quality standards or the air quality standards are being substantially exceeded."

Section 203.150, V.A.M.S., provides in part:

"It is unlawful for any person to cause or permit any air pollution by emission of any air contaminant from any air contaminant source located in Missouri, in violation of this act, or any regulation promulgated by the commission.  
. . ."

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"Air contaminant source" is defined as "any and all sources of emission of air contaminants whether privately or publicly owned or operated;" Section 203.020(3), V.A.M.S.

"Emission" is defined as "the discharge or release into the atmosphere of one or more air contaminants;" Section 203.020(10), V.A.M.S.

"Emission control regulations" is defined as "limitations on the emission of air contaminants into the ambient air;" Section 203.020(11), V.A.M.S.

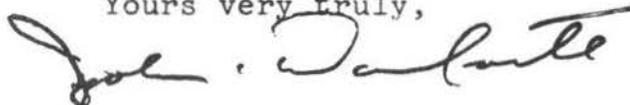
After reading all the provisions of the state law cited and quoted above, it is apparent that the legislative scheme is to impose controls on persons for air contaminants being emitted directly from facilities under their control. There is no provision in the state law similar to that in the proposed federal regulations imposing controls on facilities "because of emissions resulting from mobile source activities associated with it." Section 51.18(a). Nor in our opinion can such power be implied. Because of the complexity and broad implications inherent with such a scheme affecting the construction of highways, airports, and major land developments, the legislature should explicitly spell out the extent of such powers that the Commission should exercise.

#### CONCLUSION

It is the opinion of this office that the Missouri Air Conservation Commission does not have the authority under Chapter 203, V.A.M.S., to prevent the construction of "complex sources" when it is determined that such sources may indirectly cause ambient air quality standards to be violated.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH  
Attorney General