

The Dormant Noise Control Act And Options to Abate Noise Pollution

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INTRODUCTION

I. NOISE ABATEMENT IN THE UNITED STATES

- A. Noise Abatement Prior to ONAC
- B. Noise Abatement During ONAC
 - 1. Regulation of Noise Emissions
 - 2. Product Labeling
 - 3. Low-Noise-Emission Products
 - 4. Coordination of Noise Reduction Activities
 - 5. Assistance of State and Local Noise Control
 - 6. Noise Education and Research
- C. Noise Abatement After ONAC
 - 1. ONAC's Loss of Funding
 - 2. Revocation of Pending Standards
 - 3. Enforcement of Existing Regulations
 - 4. Update of Existing Regulations
 - 5. Coordination , Education, and Research
 - 6. State and Local Regulation
 - 7. Private Rights of Action
- D. The Current Status of Noise Abatement

II. OPTIONS FOR STATE AND LOCAL NOISE ABATEMENT

- A. Why State and Local Regulation Declined
 - 1. Infrastructure Support
 - 2. Local Disincentives
 - 3. Federal Preemption
- B. (NPC Editors note: Original text omitted Section B)

- C. Policy Options
 - 1. Infrastructure Support
 - 2. Preemption

III. OPTIONS FOR FEDERAL NOISE ABATEMENT

- A. Congressional Options
 - 1. The Future of the NCA
 - 2. Location of Regulatory Activities
- B. EPA's Options
 - 1. Risk Assessment and Management
 - a. Market Forces
 - b. State and Local Regulation
 - c. EPA Discretion
 - d. Decisionmaking Procedures
 - 2. Coordination and Oversight Functions

IV. CONCLUSION

INTRODUCTION

In early 1981, the Director of the Office of Noise Abatement and Control (ONAC) at the Environmental Protection Agency (EPA) was informed that the White House Office of Management and Budget (OMB) had decided to end funding of ONAC and that the matter was non-negotiable. (1) Congress' eventual acquiescence in OMB'S action was, and remains, unique. Of the twenty-eight environmental and health and safety statutes passed between 1958 and 1980, (2) the Noise Control Act of 1972 (NCA) (3) stands alone in being stripped of budgetary support.

Since Congress did not repeal the NCA when it eliminated ONAC'S funding, EPA remains legally responsible for enforcing the regulations it issued under the Act, but without any budget support legislated for that purpose. Moreover, although some of the regulations are now out of date, and others may be inadequate, EPA's lack of budgetary support effectively precludes their amendment. Since the NCA preempts local and state governments from regulating noise sources in many situations, these levels of government may not be able to step into the void created by Congress' decision not to fund EPA.

This report considers the future of noise abatement in the United States and what role EPA should play in that function. Part I describes the history of noise abatement in the United States before ONAC was created, during its tenure, and after its abolition. Part II evaluates the role of local and state governments in noise reduction and EPA's relationship to such efforts. Part III assesses the role of the federal government and EPA in noise reduction.

The report concludes that it would be unfortunate for Congress to maintain the status quo where EPA has ongoing legal duties, but it has no funding to carrying them out. Although Congress could eliminate the federal government's responsibilities for noise abatement, the NCA, with modifications, should remain in force. This does not mean, however, that EPA should merely pick up where it left off 10 years ago. Instead of relying primarily on emissions controls as it did previously, EPA should emphasize abatement approaches that rely on local and state activity, on market incentives, and on coordination with other agencies, private standard-setting groups, and regulatory agencies in other countries.

I. NOISE ABATEMENT IN THE UNITED STATES

Noise abatement has come almost full circle in the United States. Prior to the 1970s, there was almost no governmental activity addressed to noise pollution. During the 1970s, all three levels of government were active in abating noise. Since 1981, when ONAC lost its funding, the level of activity at all three levels has been significantly reduced, and although it is greater than prior to the 1970s, it is not significantly greater except in a few areas. This section describes the roller coaster history of noise abatement in this country and its likely effect on the level of noise at this time. The analysis considers noise abatement prior to ONAC, during ONAC, and after ONAC.

A. Noise Abatement Prior To ONAC

In the 1960s, noise pollution was a distant cousin in the family of environmental issues and, as this history will relate, it has remained outside the mainstream of the environmental movement ever since. A massive public opinion survey taken in the early 1970s revealed that the public ranked noise pollution as a serious problem, (4) but noise control advocates were unable to develop the same type of organized constituency that developed to support clean air and water. (5) One reason was that although "air and water pollution was shown actually to kill people," the supporters of noise control could not demonstrate a "direct cause and effect relationship" between excessive noise and death. (6) Advocates also lacked any dramatic illustrations of noise pollution similar to the Cuyahoga river catching on fire, nor did they have someone like Rachael Carson or Barry Commoner to popularize their cause. Because noise pollution is produced by hundreds of types of sources, noise control proponents also found it more difficult to arouse public indignation against convenient corporate targets in the way that other environmentalists attacked the automobile industry or chemical manufacturers. (7) Finally, advocates had trouble generating wide-spread support because of the incidence of noise pollution. Whereas air and water pollution normally affect large areas, only a small proportion of the people in a city or state may be burdened by particular sources of noise, and that burden may have been imposed on them by the other residents who wished to obtain the benefit of a highway, airport, or industry. (8) Despite these handicaps, noise control advocates made some headway starting in the late 1960s. Prior to that time, local noise regulation was based on legislation or ordinances that prohibited "excessive or unusual" noise, which were difficult to enforce because of their subjective character. (9) Once portable noise measuring equipment became available, (10) local and state governments began to promulgate objective emissions limitations, stated as a maximum number of decibels (dB). (11) At about the same time, Congress authorized the Federal Aviation Administration (FAA) to regulate aircraft noise emissions, (12) enacted the National Environmental Policy Act (NEPA), (13) which required agencies to assess noise impacts as part of environmental impact statements, and directed EPA to establish ONAC and to have it prepare recommendations to Congress within 1 year for further legislation. (14) Congress passed the NCA after receiving that report. (15)

Congress acted despite the lack of significant organized public support for two reasons. First, the railroads, interstate motor carriers, and motor vehicle manufacturers supported the NCA because they were concerned about complying with conflicting state and local regulations. (16) Second, EPA told Congress that 34 million persons were exposed to nonoccupational noise capable of inducing hearing loss, 44 million persons had the utility of their dwellings impacted by

transportation and aircraft noise, and 21 million persons had the same problem with construction noise. (17)

Congress intended the NCA to protect all Americans from "noise that jeopardizes their health or welfare." (18) It required EPA to regulate noise emissions from new products used in interstate commerce, (19) coordinate the noise abatement efforts of other agencies, (20) and provide information to the public concerning the noise emission of products. (21) While federal action was "essential to deal with major noise sources in commerce control of which require national uniformity of treatment," Congress intended that the state and cities retain the "primary responsibility for control of noise. " (22) Congress therefore preempted state and political subdivisions from imposing their own emission standards on new products that were already regulated by EPA, (23) but it did not preempt them from controlling noise by the use of "licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products. " (24)

This division of authority affected the development of noise abatement in two ways. First, unlike other environmental statutes, such as the Clean Air Act, (25) EPA was given no responsibility to set abatement goals for the states. As a result, ONAC tended to think of its mission as exclusively federal. As the next section will develop, this orientation inhibited state and local efforts at noise abatement during the 1970s. In addition, because EPA did not set mandatory goals for the reduction of noise, states and local subdivisions have no legal responsibility to address noise pollution. Political support for noise abatement was also affected. The ambient air pollution limitations set by EPA are a continual public reminder of the harms of air pollution and of the nation's progress in reducing those harms. The lack of any similar goals concerning noise pollution contributes to its low political visibility.

Second, unlike for other environmental statutes, Congress chose not to support state and local abatement efforts with federal program grants for personnel and equipment, although EPA had asked for such support. (26) A House committee responded that while technical assistance was "desirable," it was neither "necessary or appropriate" to provide categorical program assistance to the states. (27)

B. Noise Abatement During ONAC

The Noise Act assigns EPA the responsibility to promulgate emissions standards, require product labeling, facilitate the development of low emission products, coordinate federal noise reduction programs, assist local and state abatement efforts, and promote noise education and research. Implementation of governmental programs is difficult (28) and measured against this reality, ONAC accomplished a great deal. Yet, like other health and safety programs, (29) ONAC had both successes and failures. Some of the failures were self-induced, but others can be attributed to forces beyond ONAC'S control. The following section describes EPA's record in meeting its statutory duties.

1. Regulation of Noise Emissions

The NCA authorizes EPA to regulate noise emissions emitted from products distributed in interstate commerce (30) and from interstate railroads (31) and motor carriers. (32) ONAC promulgated several regulations and identified additional sources of noise that it intended to regulate. Although its regulatory output was not high, ONAC'S output was reasonable in light of the constraints under which it operated.

Congress mandated a four step regulatory process for regulating product noise. The first three steps consist of reports that EPA was required to write within short time deadlines. (33) Within 9 months EPA assessed the effects of noise on the public health and welfare, (34) within 12 months it evaluated what levels of abatement were "requisite" to protect public health and welfare, (35) and within 18 months it identified "major" noise sources and "techniques for reducing noise from those sources. (36) The second report, known as the "Levels Document," and called a "landmark treatise" by one commentator, (37) concluded that an adequate margin of safety required persons to be exposed to no more than a yearly average equivalent sound level of 75 dB for an 8 hour day to prevent hearing loss, and an average equivalent sound level of 55 dB to protect against activity interference. (38)

As a fourth step, Congress required EPA to propose initial regulations for each major noise source for which an emission standard was "feasible" within 18 months of its identification and to promulgate a final regulation within 6 months after the proposed regulation.(39) ONAC during its tenure identified ten products for regulation, promulgated four regulations (air compressors, motorcycles, trucks, and truck mounted waste compactors) and proposed two regulations (buses and wheel and crawler tractors). (40) No emissions standards were proposed for four of the products identified as noise sources (pavement breakers, power lawn mowers, rock drills, and truck mounted refrigeration units). (41) For both the proposed and final rules, ONAC habitually missed the statutory deadlines, often by several years. (42)

EPA had similar delays in regulating motor carrier and railroad noise emissions. Congress required EPA to propose emission standards for these noise sources within 9 months and final regulations 6 weeks later. (43) ONAC promulgated one motor carrier standard which was 1 year late. (44) EPA proposed seven railroad emission standards and promulgated five of them. (45) The American Associations of Railroads (AAR) sued EPA after it was 2 years late promulgating the first standard. (46) Although the D.C. Circuit ordered EPA to promulgate a final regulation for other areas of railroad operations by August 1978, (47) EPA missed the court's deadline by over 2 years. (48)

The statutory deadlines were unrealistic for several reasons. (49) The principle reason was that ONAC faced significant technical problems in developing a regulatory program. (50) ONAC'S efforts were also hampered by insufficient funding and staffing in its early and later years, (51) and by a lack of cooperation from EPA administrators, who were sometimes slow to sign off on clearances needed by the program. (52) For example, ONAC'S standard for interstate buses sat in Douglas Castle's office, EPA's administrator during the Carter administration, for over 1 year and eventually became a victim of Castle's failure to sign off on any agency regulations during his waning days as administrator. After the Reagan administration took office, the bus standard went

unattended by the EPA Administrator for another year. (53) In general, EPA managers did not disregard the noise program, and some were supportive of it, but several appeared to regard noise abatement as less important than the agency's other missions. (54) This last sentiment was also present elsewhere in the agency. For example, one of ONAC'S attorneys reports that other EPA attorneys held him in low regard because he was "stuck" representing the noise program. (55)

2. Product Labeling

EPA's second function under the NCA is to mandate labeling for products that emit or reduce noise, (56) but the only labeling regulation ONAC promulgated was for hearing protection devices. (57) The primary reason was that EPA's agenda in noise regulation was dominated by the restrictive legislative deadlines established by Congress for the promulgating of noise regulations. (58) In addition, a person outside of the agency believes that the leadership in the labeling area was less experienced than in other areas of ONAC. (59)

3. Low-Noise-Emission Products

The NCA also ordered government agencies to purchase "low-noise-emission products" (LNEP), defined as products that emit "significantly" less noise than permitted by an applicable emissions standard. (60) Although ONAC took the preliminary steps necessary to effectuate this aspect of the NCA, (61) the office could not do more because the statute authorized EPA to define an LNEP only after it had promulgated an emissions standard for a product. Since at the time ONAC was abolished, it had promulgated emission limits for only four products, (62) little progress was made in stimulating LNEP purchases by the federal government. ONAC, however, was more active in encouraging states and local governments to purchase quieter products through its "Buy-Quiet" program, described in a later section. (63)

4. Coordination of Noise Reduction Activities

EPA also had the responsibility to coordinate the programs of other federal agencies relating to noise research and noise control. (64) ONAC engaged in a wide variety of efforts pursuant to this responsibility, and while some of its actions have been criticized, its efforts in this area were substantial.

ONAC engaged in various types of activities that related to the noise programs of other federal agencies. It criticized the Occupational Safety and Health Administration's (OSHA) proposed noise protection rule, (65) chaired the interagency task force responsible for implementing President Carter's "Urban Noise Initiative," (66) and published reports describing federal research and other actions concerning noise. (67) One of the most important of these established guidelines for considering noise is land use planning and control. (68) Prior to some of this activity, the General Accounting Office (GAO) gave EPA generally low marks for its interagency coordination efforts. (69)

ONAC also engaged in coordination efforts addressed to private industry and international regulators. Towards the end of its tenure, ONAC worked with professional groups and regulated industries concerning development of consensus standards that both the private sector and the

government could use. (70) ONAC personnel also served as part of the United States representation at international meetings concerning noise abatement. (71) ONAC also worked on harmonizing domestic and international regulations to reduce economic dislocations for United States firms operating here and abroad, (72) " including "extensive coordination" with the EEC.(73)

Despite these efforts, there are some complaints that ONAC could have done a better job of domestic and international coordination. For example, a scientist alleges that although there was "effective" communication between the technical community and ONAC during its early years, ONAC subsequently refused to participate in consensus development activities, and disregarded some or all of their consensus standards after they were devised. (74) An industry official alleges that at an ONAC-sponsored workshop, the regulated industries were unanimous about the need for ONAC to work more closely with them in developing goals and incentives for noise abatement, but that ONAC failed to include what industry said when it published a report of the proceedings. (75) And there are complaints that the behavior of an EPA official at an international meeting offended representatives from other countries and harmed EPA's credibility with them. (76)

An EPA official notes that such complaints are common from persons in regulated industries and others who are unhappy when an agency does not accept their recommendations. He also disputes the characterization of what happened at the European meeting and denies that EPA has been disabled from effectively representing the United States. He notes that EPA continues to serve as the representative of the State Department at international conferences and receives invitations to contribute to such conferences in Asia as well as Europe. (77)

EPA's other efforts at coordination concerned the FAA's regulation of airport noise. (78) From December 1974 to October 1976, EPA submitted 11 proposals to FAA concerning aircraft noise. (79) Although the FAA did not accept most of these recommendations, (80) this result may not be a fair measure of their impact. By drawing public attention to the adequacy of FAA regulation of aircraft and airport noise, EPA undoubtedly influenced how the FAA proceeded. Moreover, FAA regulation was based on the scientific and technical work done by the EPA concerning the impact of aircraft noise. (81)

5. Assistance of State and Local Noise Control

Prior to 1978, EPA provided only limited support to state and local noise control efforts, (82) primarily because the NCA assigned the agency only limited responsibilities concerning nonfederal noise abatement. (83) In 1978, after congressional oversight hearings revealed that EPA's original mandate was inadequate to foster state and local initiatives, (84) Congress passed the Quiet Communities Act, (85) which authorized ONAC to create a grants program and offer technical assistance to improve state and local noise abatement. (86)

After receiving this new authority, ONAC embarked on an ambitious and innovative program of supporting local and state governments, which for the most part was well regarded. ONAC offered a limited amount of direct financial assistance to a small number of states and cities, (87) but most of its efforts consisted of technical support such as ten regional technical centers, (88)

the ECHO (Each Community Helping Others) program, (89) and over 100 training programs attended by 4,000 noise officials. (90) ONAC also wrote and distributed a model state and local noise ordinance. The former was incorporated by 20 states, (91) while the latter was distributed to over 1200 communities. (92) The model code has received compliments (93) and criticism for being too detailed, impractical, and noncommittal. (94) Concerning these complaints, an EPA official responds that ONAC prepared a 300-page workbook to explain the model ordinance and how it could be tailored to suit the needs of particular cities. (95) Finally, ONAC established a "buy-quiet" program that offered communities model contract specifications for the purchase of low-noise emission products. (96)

6. Noise Education and Research

The NCA also requires EPA to develop and disseminate information and educational materials concerning noise and to sponsor research concerning the effects of noise and the methods by which it can be abated. (97) ONAC was active in both areas, and once again its efforts were for the most part well received.

Beginning in 1976, ONAC'S education efforts included establishing a National Information Center for Quiet, producing public service television announcements, designing and distributing teaching materials to school systems and unions, (98) and publishing 260 technical reports concerning noise abatement. (99) The reports have been praised as being useful to health and engineering professionals, (100) and criticized for being uneven in quality and technical content. (101) EPA also sponsored research projects to investigate potential health dangers posed by noise and techniques to abate noise more effectively. (102)

C. Noise Abatement After ONAC

EPA's noise abatement activities essentially stopped after ONAC lost its funding. State and local activities also declined. This section proposes an explanation for Congress' decision to eliminate ONAC'S funding and describes the status of noise control efforts after its elimination.

1. ONAC'S Loss of Funding

Although ONAC'S efforts were more successful in some areas than others, it had a record of accomplishment after the first decade of the NCA. ONAC promulgated four product and six transportation noise standards, but it was unable to complete work on standards for six other major noise sources. Although it made little progress in implementing product labeling or the LNEP program, ONAC was quite active concerning coordination, research and education, and support of local and state efforts. While this is a mixed record, it can not be said that it justifies elimination of the program. As noted earlier, government is a difficult business and most other health and safety programs have similar mixed records.

Despite the acceptable nature of ONAC'S performance, Congress eliminated funding for the program for three reasons. First, EPA told Congress that ONAC should be disbanded because an austere federal budget required that some current federal programs be eliminated, the benefits of noise control were highly localized, and noise control could be carried out by State and local

governments without the presence of a federal program. (103) Why EPA's management acquiesced in OMB'S decision is unknown, but the decision is consistent with the general deregulatory attitude of Ann Gorsuch and other persons appointed by the Reagan administration to run EPA. (104) It is known that EPA's managers rejected a compromise to fund ONAC at a greatly reduced level. After OMB'S initial decision to end funding for ONAC, OMB officials agreed after meeting with lower level EPA officials to fund ONAC at the level of around \$1 million to maintain the enforcement of existing regulations. But EPA's management rejected the compromise and decided to eliminate ONAC entirely. (105)

Second, ONAC lacked strong political allies. Those industries that originally supported the NCA in order to obtain federal preemption of conflicting local regulations had accomplished their goal. They told Congress that it could disband ONAC as long as it maintained their preemption. (106) Moreover, as noted earlier, (107) there has never been a well-organized constituency for noise control similar to interest groups supporting other types of environmental protection. (108)

Finally, ONAC might have survived if its critics had not had the garbage truck standard to kick around. In 1979, EPA promulgated a regulation that limited noise emissions from truck-mounted waste compactors. (109) Because the noise reduction was achieved primarily by requiring garbage trucks to run their engines more slowly when they compacted garbage, ONAC considered the standard to be a reasonable response to the problem of noise created when garbage is compacted. (110) Nevertheless, the standard was opposed not only by the regulated industry, which argued it was unnecessary, (111) but also by some local noise administrators, (112) and White House staff, (113) who agreed. ONAC fought back-claiming that "if we had been talking about a chemical substance with similar effects, EPA would have regulated with more dispatch and vigor (114)-but it lost the battle when nationally syndicated columnist James Kilpatrick opined, "Metaphorically speaking, if you will forgive me, this is garbage." (115)

2. Revocation of Pending Standards

Once Congress accepted EPA's request that it stop funding ONAC, the agency had to decide what to do about products that had been identified as significant noise sources because the NCA obligated it to regulate any products so identified. (116) An EPA attorney warned that the agency could not merely withdraw the prior designations because "there is no evidence to suggest that the products in question no longer have the same effects on public health and welfare" recognized when the products were identified as requiring regulation. (117) EPA also rejected withdrawing the prior designations on the basis that state and local governments had shown that they were capable of regulating these products because this reason was outside its legal authority and possibly not true. (118) The agency finally decided to justify its actions on the basis that noise regulation should be temporarily abandoned because of reduced federal tax revenues. In December 1982, EPA withdrew the outstanding product identifications (119) and revoked the emissions standard for garbage trucks. (120) Although EPA was nervous about its deregulation rationale, there was no judicial review.

EPA's justification for its actions is dubious. While the courts will take agency resources into account in responding to citizen suits to enforce time deadlines for rulemaking, lack of resources is only relevant to the amount of additional time the court will give an agency to comply with a

deadline--it does not excuse an agency from ever regulating. (121) It is difficult to believe that Congress intended that EPA could postpone indefinitely the deadlines specified in the NCA by the simple expedient of withdrawing prior designations because the agency did not consider noise pollution an important problem. After all, the reason that Congress established the deadlines in the first place was to force EPA to regulate in a timely manner. (122)

The Anti-Deficiency Act (123) prohibits government officials from making or authorizing an expenditure or obligation in excess of a congressional apportionment. (124) Although the act might be interpreted to prohibit EPA officials from spending money appropriated for other purposes on implementation of the NCA, EPA has apparently not accepted that interpretation and has continued to carry out certain activities related to the implementation of the NCA. (125) For example, in 1986, EPA amended its regulations regarding noise standards for trucks and motor carriers. EPA has continued its coordination and consultation activities with other federal agencies regarding noise and has continued enforcement activities, albeit at a limited level. EPA has continued to disseminate existing information and educational materials regarding noise control activities.

While EPA may not be prohibited as a legal matter from promulgating standards for the significant noise sources it previously identified, it is effectively prohibited from doing so by the lack of any budget for that purpose. To promulgate new standards, or even amend existing ones, EPA would have to divert agency personnel from other tasks, hire contractors, and absorb other expenses. There is no indication that EPA has sufficient budgetary flexibility to take this step.

3. Enforcement of Existing Regulations

Since revoking the pending standards, EPA's regulatory activity has been limited to enforcement of the existing standards, except for the amendment of two standards mentioned above. EPA's enforcement efforts have been hampered in two ways by the elimination of ONAC. First, the agency was forced to drop industry compliance reporting requirements for its product and labeling standards because it did not have any staff to implement them. (126) Lacking any compliance data, EPA can not say whether product manufacturers are abiding by its regulations. (127) Second, EPA has been slow to investigate and enforce existing regulations when violations have been found. For example, EPA has been investigating since 1987 approximately 18 hearing protection device labelers for a range of violations. (128) The investigation has been stalled because EPA has had to borrow staff from other responsibilities and because it has to develop procedures to assess civil penalties for violations of noise regulations. (129) The impact of EPA's limited capacity to enforce its standards is mitigated by the fact that the Department of Transportation (DOT) is responsible for enforcing the transportation noise standards promulgated by EPA. Unlike EPA, DOT has ongoing enforcement programs. Nevertheless, there may also be problems with DOT enforcement.

The Federal Railroad Administration (FRA), located in DOT, is responsible for enforcing EPA's railroad noise standards. It has discontinued routine noise inspections because the rate of compliance has been "extremely" high, (130) but the General Accounting Office (GAO) found that high compliance rates may be explained, in part, by the FRA'S practice of not citing any railroad that has made a good faith effort to correct a violation, even if the railroad is still in

violation of the standard after the correction is made. [\(131\)](#) Moreover, an EPA official reports that he received a complaint from a person living near a railroad that the FRA could not do anything about loud, night-time noises because inspectors did not work at night. [\(132\)](#)

The Federal Highway Administration (FHWA), also in DOT, has likewise deemphasized enforcement of EPA's noise standards claiming high compliance rates and the burden of other inspection duties. [\(133\)](#) The GAO reports, however, that older trucks may be making excessive amounts of noise because of inadequate maintenance. [\(134\)](#) Moreover, a state noise control official reports that he was asked by local FHWA personnel not to refer any more noise complaints to them because they were under pressure from Washington to undertake different tasks. [\(135\)](#)

The extent of weaknesses in DOT enforcement, if any, is unclear. This does not mean, however, that the enforcement of transportation noise regulations has been unaffected by ONAC'S loss of funding. As the next section discusses, although EPA's railroad and motor carrier standards may need to be updated to protect the public adequately, EPA lacks the resources to undertake this task. ONAC'S loss of funding may have harmed the public in another manner. FHWA officials told GAO that source controls are "probably the most cost-effective" way to address traffic noise, but without new EPA regulations, DOT will continue to spend millions of dollars for the erection of noise barriers along federal highways. [\(136\)](#)

4. Update of Existing Regulations

ONAC'S loss of funding has had another effect besides restricting EPA's enforcement capacity. Because of a lack of funding, EPA can not update existing regulations that have become out of date or that are inadequate. Its labeling, railroad, motor carrier, and product standards may all be out of date. EPA's noise protection labeling standard has become highly misleading. Scientific studies have demonstrated that persons wearing earplugs receive only 8 to 56 percent of the protection indicated by the Noise Reduction Rating (NRR) required by EPA, and that persons wearing earmuffs receive only 35 to 67 percent of the protection indicated by the EPA rating. [\(137\)](#) Recognizing these discrepancies, OSHA was forced to instruct its inspectors to assume that workers receive 50 percent less noise attenuation than indicated by an NRR. [\(138\)](#) An irony is that EPA has floundered for several years trying to force hearing protection manufacturers to comply with the existing labeling requirements. [\(139\)](#)

EPA's railroad standards also need updating. The FAA is powerless to protect some persons from railroad noise because there is no standard prohibiting noise emissions of certain operations, [\(140\)](#) existing standards are effectively unenforceable, [\(141\)](#) or because railroads have been able to exploit a loophole. An example of the latter problem has occurred in Boston where the FAA has been unable to prevent commuter railroads from running extremely loud engines (87 to 90 dB) all night long to keep heaters running in commuter passenger cars. [\(142\)](#) Even where the regulations are applicable, they may be inadequate. An EPA official explains that when the standards were developed, ONAC took into account the economic difficulty of the industry, and now that the industry's situation has improved, the standards may need to be reexamined. [\(143\)](#) Even if the regulations are not inadequate, they are written in a manner that makes them more difficult to perform. A FRA official points out that his agency could be more effective if EPA

rewrote its standards to take advantage of the new noise measurement equipment that is now on the market. (144)

Similar problems have cropped up with the motor carrier regulations. For example, inspectors frequently can not perform stationary tests on heavily traveled highways because of high background noise levels, which make it difficult to obtain accurate readings of noise from individual trucks. (145) It is not clear whether EPA could create noise tests that are less time consuming and difficult to perform, but until it receives funding to implement the NCA, it is unable to seek such methods. (146)

Finally, EPA may be able to improve its product standards by switching to sound power as the metric to measure noise emissions. A scientist currently doing research in this field asserts that adoption of this method would improve the accuracy of the standards. (147) Use of this method would also make it possible to conform them to standards adopted by the European Economic Community (EEC) which rely on sound power measurements. (148) But an EPA official responds that current procedures may be more cost effective. (149)

5. Coordination, Education, and Research

ONAC'S loss of funding also ended all but three of its previous coordination, education, and research functions. For example, ONAC was prevented from distributing model building and mechanical codes for noise abatement that it had completed. (150) It was also prevented from distributing technical reports it had completed on grain dryers and minibikes, (151) and from completing a model land planning code for land development surrounding airports. (152) EPA's three remaining efforts involve commenting on Environmental Impact Statements (EISs), participating in an interagency committee, and answering telephone inquiries. While EPA is committed to these actions, its effectiveness is constrained by its lack of resources. EPA comments on proposed FAA regulations (153) and EISs, and claims some success in persuading the FAA to do a better job disclosing noise impacts. (154) An FAA official, however, disputes the usefulness of the EPA input. (155) Whether or not appreciated by the FAA, EPA's efforts in this area are constrained by the fact that one part-time employee is responsible for the EIS reviews and he also has other responsibilities. (156)

EPA is also a member of the Federal Interagency Committee on Noise (FICON). Among its functions, the committee is charged with considering whether agencies like the FAA should change the methods by which they measure noise impacts for EIS purposes. (157) It is not clear whether EPA's participation in the committee is hampered by its lack of noise personnel, but it may be since there are only a few persons left at the agency with a technical background in noise.

EPA also continues to respond to requests for noise information, but the elimination of ONAC has left dissemination of noise information in disarray. One part-time employee is available to respond to requests for information, but he has no extra copies of the documents in his library. (158) While some ONAC reports are publicly available from the National Technology Information Service, (159) local noise control officials and noise control consultants maintain that key ONAC documents are unavailable. (160)

A related problem is that although EPA no longer has a noise office, persons subject to regulation and local regulators still require clarification from time to time. Assisting them has become an increasing problem because industry is selling new types of products that do not match up well with standards that were written 5 to 10 years ago. EPA is able to respond to these inquiries only because it still has a few people left over from the noise program. As these key people leave, however, the agency will lose what little noise expertise it has left. [\(161\)](#)

ONAC'S loss of funding has another effect. Some of the available ONAC technical information has gone out of date. For example, ONAC'S widely distributed model code is dated because although there is a new generation of noise monitoring equipment which is less expensive and more accurate, the code is not written to take advantage of this break-through. [\(162\)](#) Some technical information is also out of date because new types of noise problems have arisen since the information was generated. [\(163\)](#)

6. State and Local Regulation

Regulators and consultants agree there was a significant decline in active state and local noise programs after ONAC was abolished, [\(164\)](#) but there is no reliable data concerning the extent of the decline. EPA officials believe that only a handful of states have on-going noise abatement programs, [\(165\)](#) and available data indicate a decrease in on-going local programs from 300 to 400 in 1981 to 50 to 75 programs today. [\(166\)](#) Although the number of communities has declined, the scope of abatement efforts has been broadened in the communities that remain active. Whereas early local efforts focused on emissions limitations, noise abatement tools now include land use planning (including zoning, subdivision regulation, and site design review), environmental impact assessment, real estate disclosure requirements (such as requiring sellers to disclose noise levels on their property), and impact fees (based on the level of noise emissions). [\(167\)](#) For example, in California, where there is probably the most noise abatement activity in the country, cities use land use planning (such as specifying that noise sensitive land uses, such as hospitals and schools, be located and designed to reduce noise), development of loop roads to reroute traffic away from neighborhoods, and building codes (such as requiring that new structures must use soundproofing material approved by a city before a building permit is issued). [\(168\)](#)

Except for a few places like California, however, local regulation is in "disarray." [\(169\)](#) Cities apply widely varying approaches to noise abatement, sometimes including unrealistic emissions limitations. [\(170\)](#) This "fragmented noise policy" not only poses a problem for companies subject to more than one set of regulations (such as electrical utilities which operate in two or more different cities), but it makes it generally difficult for the business community to plan future activities. [\(171\)](#)

7. Private Rights of Action

In the absence of effective governmental noise abatement programs, persons adversely affected by noise can seek a tort remedy. The tort system and the regulatory system are two methods by which society can achieve an answer to the same question: what mix of environmental pollution and protection is acceptable. Moreover, while the two systems in theory can produce the same

answer or result, the environmental movement which started in the 1960s was motivated, in part, by recognition that problems associated with tort remedies made this approach less satisfactory than a regulatory approach. (172) While nuisance law has been used to abate noise pollution, (173) this general lesson holds for noise pollution as well.

The neighbor(s) of a land owner who emits loud noises can seek monetary and/or injunctive relief by alleging that the land owner's activities constitute a "private nuisance," except in the case of railroad and motor carrier noise sources, where tort suits are apparently preempted. (174) To prevail, the plaintiff would have to demonstrate that:

- (1) the noise interfered with the plaintiff's property interest, such as by causing the plaintiff health problems or by limiting some of the ways that the plaintiff's property could be used;(175)
- (2) the interference with the plaintiff's land use resulted in a significant or substantial harm;(176)
- (3) the defendant either acted with the purpose of causing that harm, or knew (or should have known) that the harm was likely to result from the noise; (177) and
- (4) the invasion is "unreasonable" because the gravity of the harm of the plaintiff outweighs the utility of the defendant's conduct. (178)

Tort remedies will work satisfactorily only if individuals who are harmed actually sue. But the harm to individual property owners may be too small to merit a law suit, and the transaction costs of joining multiple property owners may prevent a class action. Moreover, even if some plaintiffs are successful, there may be no reduction in the amount of noise pollution since reducing the level of noise is often significantly more expensive than paying out claims to the few plaintiffs who file and successfully maintain nuisance suits. Even if all persons who are actually harmed sue, some will fail because it is often difficult for a plaintiff to prove some of elements of actionable nuisance. (179) For example, while scientific evidence may establish that there is a probability that noise causes loss of hearing or other harmful health effects, the same evidence does not prove individual causation.

In addition, since the producers of noise pollution, such as railroad yards, truck terminals, and manufacturing plants, have a considerable amount of economic and social value, the injury to the plaintiff(s) will have to be substantial before a court will decide the fourth element of the nuisance test in favor of a plaintiff. (180) Professor Rodgers reports:

Thus, the case law stresses the extent and degree of the hurt, with a number of cases declining injunctive relief where the noise was thought to be only sporadic or intermittent, or merely annoying, without constituting a serious health hazard, or speculative, or not "substantial" enough to justify recovery under an objective test of whether it would injure a normal person. . . . Similarly, in determining whether a noise nuisance exists, and particularly in fashioning an appropriate remedy, courts have stressed the value of defendant's enterprise . . .(181)

Finally, even if a court determines that the defendant's interference with the plaintiffs land is "unreasonable" under the fourth element, courts will apply a second "balancing" test to determine whether to grant injunctive relief, (182) which involves an even more open-ended test concerning the equity of the plaintiffs and defendant's positions. If the court does not grant injunctive relief, plaintiffs are forced to sue again once defendant's activities create additional damages.

In comparison to nuisance suits, regulatory approaches to reducing noise pollution have five advantages. First, noise reduction does not depend on whether plaintiffs have sufficient wealth to bring tort suits. Second, the decision of how much noise pollution should be tolerated is made in one proceeding, open to participation by all interested parties, by decisionmakers with access to relevant scientific and economic expertise. As Professor Hines notes:

Litigation is fortuitous in its timing, in the type of case that may arise, and in the quality of the presentation that may be made for each side. An effective program of pollution control requires that the control agency possess considerable expertise in the area of regulation and that it have the capacity to plan ahead for anticipated problems. Courts are manifestly not endowed with these features. (183)

Third, a regulatory body is in a position to define clearly what conduct is expected of those who emit noise. By comparison, the tort approach, which involves two ad hoc balancing tests, makes it very difficult to predict the prospects for success in a nuisance action involving industrial pollution. (184)

Fourth, an agency is empowered to control pollution regardless of whether it impacts on a person's property. By comparison, a person can rely on the tort of nuisance only in cases where the person's enjoyment of his or her property is affected.

Finally, an agency is able to administer a flexible program that involves remaining in contact with the regulated parties so that they comply with the agency's orders. By comparison, "[t]he traditional reluctance of courts to issue an affirmative order under equity powers requiring the carrying out of some tasks demonstrates the limited effectiveness of a court centered pollution control program. (185)

The previous analysis does not establish that tort remedies are unimportant in obtaining protection from noise pollution. (186) It does suggest, however, that sole reliance on tort remedies is unlikely to achieve the same degree of protection as a regulatory approach. This is the conclusion that has been reached in every other area of environmental protection, and there appears to be no basis on which noise pollution can be distinguished.

The previous discussion assumes that tort remedies are not preempted by the NCA. The Supreme Court has expressed reluctance to find that state tort remedies are impliedly preempted, (187) and the NCA contains no express preemption provision. Indeed, the NCA seems to preserve common law rights of action. (188) Nevertheless, the courts have held that tort actions in some fields of health and safety are preempted by federal regulation. (189) Were the courts to take that

position concerning the NCA, possibly outmoded EPA emission and labeling standards might be raised as a defense.

D. The Current Status of Noise Abatement

With the elimination of ONAC, EPA's regulatory and coordination activities have been reduced to a trickle. Available information indicates that there has been a decline in the number of on-going state and local noise control programs although the magnitude of that decline can not be documented. Nevertheless, when this trend is added to the reduction in EPA's activities, there can be little doubt that there is less governmental activity devoted to abating noise than there was 10 years ago.

What is less dear is how much noise pollution exists at the current time in the United States. The last study of the extent of noise pollution occurred in 1980. (190) Nevertheless, "it is safe to assume that noise in communities is increasing." (191) Noise is directly related to population growth and the urban population in the country is increasing at twice the rate of the nonurban population. (192) Moreover, since there has been growth in the airline, trucking, and construction industries, these noise sources have likely increased. Regulation may have mitigated the extent of the increase, but EPA has been effectively disabled from enforcing its standards by budget constraints (193) and there are questions about the adequacy of the standards enforced by DOT. (194) Moreover, there are no federal standards for other noise sources, such as almost all construction noise, (195) and state and local regulation has declined significantly. (196) Moreover, industry research and development concerning the development of quieter products has slowed to a trickle, in part, because of the removal of any meaningful threat of regulation. (197)

EPA should commission a new study to determine the extent of noise pollution in the United States. (198) Although EPA has in the past relied on estimates of the extent of noise pollution, (199) this time it may be better to commission a study that would take actual measurements of ambient noise levels and noise sources. This would not only provide a more accurate baseline for future abatement efforts, but it would give EPA more credibility for restarting implementation of the NCA. (200)

While the exact scope of the need for additional noise abatement is uncertain, health professionals believe that additional regulatory activity is warranted. A consensus development conference held at the National Institute of Health (NIH) in 1990 found that "[h]earing loss from nonoccupational sources is common" and "public awareness of the hazard is low," (201) It concluded that "[i]nconsistent compliance and spotty enforcement of existing government regulations have been the underlying cause for their relative ineffectiveness in preventing NIHL [noise induced hearing loss]" and that a "particular unfortunate occurrence was the elimination of [ONAC] in 1982." (202) The American Academy of Audiology, (203) the American Speech-Language association, (204) and the National Hearing Conservation Association (205) all agree with the NIH conclusions. And a "Proposed National Strategy for the Prevention of Hearing Loss" published by the National Institute of Occupational Safety and Health (NIOSH) in 1988 calls on Congress to reestablish the type of educational, research, and coordination activities

undertaken by ONAC as important elements in a long-term strategy to reduce noise-induced hearing loss. [\(206\)](#)

The health community's support for renewed federal activity is based on research identifying the health and welfare consequences of noise. Proof of noise-induced hearing loss, which has been "extensively researched" and is "no longer controversial," comes from the industrial context, but there is "growing evidence" of hearing loss associated with leisure time activities, loud music, and other sources of nonoccupational noise. [\(207\)](#) Noise has also been implicated in the development or exacerbation of a variety of other health problems, ranging from hypertension to psychosis. [\(208\)](#) Among the ways that noise degrades the quality of life is by contributing to sleep disturbance, [\(209\)](#) interrupting communications, [\(210\)](#) and increasing anxiety and anti-social behavior. [\(211\)](#)

Congress and EPA have a unique opportunity. Enough time has passed that the benefits and detriments of ONAC'S approach to noise abatement are now apparent. Assuming that additional abatement efforts are merited, the sections that follow discuss how to shape future abatement efforts in light of ONAC'S experiences. Part II considers options for state and local noise abatement and Part III considers options for federal abatement.

II. OPTIONS FOR STATE AND LOCAL NOISE ABATEMENT

Local noise abatement has not prospered in the years since ONAC was disbanded. This itself suggests that ONAC'S support of an infrastructure for local activity was an important catalyst. Nevertheless, the decline in local activity could also reflect local voters' lack of interest in noise abatement. This section examines the connection between federal support and local effort and concludes that cities and states would become more active in noise abatement if the federal government resumed its infrastructure activities. Congress could locate the responsibility of infrastructure support in some other agency or agencies, but EPA is still the best home for such an effort.

A. Why State and Local Regulation Declined

EPA told Congress that ONAC should be disbanded because an austere federal budget required that some current federal programs be eliminated, the benefits of noise control were highly localized, and noise control could be carried out by State and local governments without the presence of a federal program. (212) These arguments reflected a "rebuttable presumption" in favor of local regulatory programs that guided the Reagan administration. (213) Whenever possible, the administration sought to return control over "local lifestyles to local decisionmakers. (214)

According to the Reagan federalism philosophy, noise is a local problem because noise pollution does not travel very far and it is quickly dissipated. (215) Accordingly, local regulation is more efficient since local government can more easily respond to different types of local conditions. (216) Requiring local governments to fund their own noise abatement means that they must decide whether this activity is more important than other responsibilities they have. The failure to fund noise abatement activities can therefore be attributed to the low priority given these activities by local governments. (217)

This argument, however, presumes that local citizens are informed about the risks and effects of noise. In fact, the public is generally uninformed about noise impacts. (218) In addition to this problem, the explanation has two other flaws. First, local regulation may become ineffective or inefficient without federal involvement. (219) Noise abatement by local governments is this type of situation. One reason its that ONAC'S demise eliminated economies of scale that made noise abatement more affordable for local government. In addition, by stimulating local noise abatement activity across the country, ONAC lessened the concern of cities and states that they would be disadvantaged in the competition for industrial development by addressing their own noise problems. Second, although the Reagan concept of dual federalism envisions that local governments will be given control over local problems, only a partial devolution actually occurred in the case of noise abatement. Because of preemption and related factors, local government may be prevented, or at least discouraged, from regulating some important local sources of noise.

This section explores these two alternative explanations for the decline in local regulation. It demonstrates that although citizen lack of interest in noise abatement can not be dismissed as an explanation for the decrease in local efforts, the alternative explanations are more persuasive.

1. Infrastructure Support

Professors Mashaw & Rose-Ackerman suggest why the elimination of EPA support was an important factor in the nosedive in local activity. When the federal government creates the information that is used by local governments for their activities, there are significant economies of scale that lower the cost of local activity. (220) ONAC created economies of scale activity in two ways. First, because most communities lack any expertise in noise abatement techniques, (221) ONAC'S sponsorship of training programs, intercity information exchange, creation of model ordinances, and so on, offered local governments an inexpensive means to obtain the necessary information and expertise necessary to create and maintain noise programs. (222) Second, ONAC'S sponsorship of research created a scientific and technical basis for local and state noise control efforts that has not been replaced. For example, ONAC'S "Levels Document" offered local officials authoritative guidance concerning the levels of cumulative noise that posed a danger to local citizens.

The elimination of the federal infrastructure has raised the cost of local noise control to the point where it is no longer affordable for most jurisdictions. Not only is noise abatement more expensive, but the federal infrastructure was eliminated at the same time that state and local governments were hit with significant decreases in federal aid. (223) Noise abatement is but one more victim of the massive shift in the financing of government from the federal government to the states. (224)

Reestablishing a federal infrastructure would increase the number of state and local noise control programs by decreasing the cost of starting and maintaining such programs, and the experiences of local noise control officials bear this out. When an association of California noise control officials has offered inexpensive training sessions, officials from dozens of California municipalities have signed up. (225) There has been similar interest in a NANCO program that certifies government employees as technically capable of running noise control equipment. (226) NANCO hopes to offer these services nationally, but it has been stymied by a lack of resources. (227) In addition, EPA officials (228) and noise consultants (229) report that since ONAC has been abolished, they have received hundreds of telephone calls seeking information about how to implement noise abatement activities.

2. Local Disincentives

Professors Mashaw & Rose-Ackerman also suggest that without federal involvement local regulation may be ineffective because there are local disincentives to regulate stringently. (230) Noise presents this type of problem. As noted earlier, noise often only affects a portion of the population in a city or state, and that burden may have been imposed on them by the other residents who wished to obtain the benefit of a highway, airport, or industry. (231) In other legislation, such as the Clean Air Act, Congress spoke to this problem by mandating a minimum floor of protection for all citizens, but the NCA contains no such requirement. (232) Although a

similar approach is justified concerning noise, (233) Congress chose' not to require a minimum level of protection by states. and local governments.

Congress' decision not to fund ONAC had two effects on local disincentives. First, Congress' decision sent a signal to citizens (and their elected leaders) that noise abatement was unimportant. That is, the failure to abate noise that affected some of a community's citizens was unimportant. Second, because ONAC'S infrastructure activities stimulated noise abatement activity across the country, it minimized fears that a city or state would be disadvantaged in the competition for economic development by imposing noise abatement requirements.

State and local noise control officials concur in the previous conclusions. Terry Obteska, Manager, Noise Control Program, Air Quality Division, Oregon Department of Environmental Quality, has written the Administrative Conference:

The demise of the federal program in 1981 has been a disastrous experiment, resulting in the wholesale death of state and local programs. ...

Dismantlement of the national noise control effort produced predictable results. Without a federal program, the linchpin of the network, it became politically expedient to classify noise pollution as a "nuisance" and cancel programs under the pretext that it was a cost savings measure. Paradoxically, the costs borne by those exposed to airport, highway, railway, and other egregious noise products, if calculated, are by no means insignificant. (234) Mr. Obteska reports that he expects Oregon to eliminate the state's noise control program in the near future in response to the lack of federal support and declining state resources.

A letter from Edward DiPolvere agrees that the lack of any federal program is a key factor in the decision by states to eliminate their own noise control efforts:

It was clear to me back 10 years ago that once EPA disbanded its ONAC program that the weak State and local programs would soon die. Unfortunately, that was the case; even worse, most strong programs also died within the next few years. The New Jersey program was cut in half in 1981 and has just been bumping along since then. The proposed New Jersey budget for 1992 fiscal year which starts in a few months (July 1, 1991) does not include any funding for Noise Control. So one of the longest ongoing and strongest programs will also die. And it's easier for a state to kill a program that has no form of matching subsidy federal funding or stronger link to public risk. In New Jersey we are in a severe budget crisis and many programs are being pinched or curtailed but only [the] Noise Control Program of 25 program classifications is being eliminated altogether. (235)

North Dakota's noise program has had a similar fate, which according to a letter from Dana Mount, Director, Division of Environmental Engineering, North Dakota State Department of Health, can also be attributed to the lack of federal support:

North Dakota has had an active noise control program since 1971. ... Since the phase-out of the EPA program, the State has been able to provide an extremely limited budget for noise control. ... Due to the State's current financial concerns and shifts in priorities, the State's noise control law was repealed by the Legislature this year and will effectively phase out completely on July 1, 1991. We believe that there is a need for a strong noise control program within EPA, that includes extensive support for State noise control programs. (236)

Ellwyn G. Brickson, Noise Control Specialist, Environmental Health Division, Orange County, California, tells a similar story:

When the EPA reduced their personnel from 175 to 0, the State of California ONAC also reduced the staff from 5 to 0. The biggest reason for decline in noise abatement programs is simply a lack of funding. The noise problems are still being discovered. (237)

Peter Nichols, Director of Environmental Health Services, City of Norfolk, Virginia, writes that he was able to start a noise control program because of the training he received from ONAC. He concludes, "The possibility of a federal community noise control program being re-established is exciting . . . I support any efforts to re-establish a federal noise control program." (238)

3. Federal Preemption

Finally, the decline in local noise abatement might be attributed, in part, to federal preemption. The extent of preemption varies concerning product standards, transportation standards, and labeling, but these differences do not affect the conclusion that states and local governments are generally unable to remedy the problem that some of EPA's noise standards are obsolete.

Since the NCA preempts states and political subdivisions from imposing their own emissions standards on new products that are regulated by EPA, (239) these levels of government can not promulgate different emissions standards for air compressors, motorcycles, and medium and heavy duty trucks, which are covered by product standards promulgated by ONAC. (240) State and local governments are not preempted, however, from controlling noise emitted by these sources by the use of other regulatory tools, such as restriction of use, operation or movement, and they can enforce the EPA standards by adopting identical limitations as their own laws or ordinances. (241)

Since EPA regulated only three products, the effects of preemption concerning product regulation are narrow. And EPA's lack of enforcement could be overcome if other levels of government adopted the EPA standards as their own. To the extent that the EPA standards are obsolete, however, local enforcement of EPA's standards would be inadequate. Moreover, alternative methods of enforcement may not work in all circumstances. For example, local noise regulators have complained that EPA's new truck regulations in some cases preempted stricter local emissions regulations. (242) As a result, a city may lack any effective mechanism to abate the noise from delivery trucks. Time and place restrictions could be employed, but it may be impractical to cut off access to local businesses during business hours. Zoning and land planning restrictions likewise would have no efficacy against mobile sources of noise. The city may also not be able to regulate the warehouse area where the trucks are located. A land owner could be exempt from any change in zoning if the prior use of the land qualifies as a nonconforming use exempt from ex post zoning changes. (243)

States and localities are preempted from regulating the same railroad or motor carrier noise emissions regulated by EPA by any form of regulation (other than an emissions standard identical to the one promulgated by EPA) unless the agency grants a "special local circumstances" exemption permitting local regulation. (244)

Since EPA has regulated railroad and motor carrier noise sources extensively, (245) the scope of this preemption is broader than the preemption of product regulation.

Likewise, the consequences for the public of such preemption are also greater. There is evidence that the transportation emissions standards have become obsolete, or are inadequate for other reasons. (246) States and local government have no regulatory authority to resolve such problems unless EPA grants them an exemption. This solution, however, is problematic for three reasons. First, EPA has established a significant burden of proof to obtain an exemption, which has discouraged cities which have applied from pursuing this option. (247) Second, it is not apparent that EPA has the resources to respond to an application. Finally, EPA would have to turn down any regulatory initiative which placed a significant burden on a railroad or trucker's capacity to operate in interstate commerce. This constraint may limit cities from adopting the most effective noise controls. The NCA also provides for preemption concerning labeling standards. States and local governments can establish their own labeling standards only to the extent they do not conflict with federal standards. (248) There is one federal labeling standard for hearing protection devices, which is misleading because it does not accurately reflect the degree of hearing protection the devices provide under actual conditions of use. (249) But there is no role for state or local governments in addressing the misleading nature of the label. Even if state or local labeling is not preempted, which it appears to be, most local jurisdictions lack the technical and informational capacities to promulgate labeling requirements. Moreover, local labels would lead to substantial confusion for consumers who would find two labels with conflicting information.

In light of the previous preemption, cities may not find it cost-effective to start (or maintain) a noise abatement program when they are effectively prevented from addressing some significant local sources of noise. The extent to which federal preemption has actually discouraged starting or maintaining local programs is unknown. It may not be an important factor since the scope of EPA regulation is fairly narrow and many important noise sources remain unregulated.

Some cities, however, may be discouraged from regulating because of industry claims of preemption in cases where such claims are dubious or erroneous. (250) A recent case, where the federal government assisted an industry to make a dubious claim of preemption, illustrates this potential. The government filed a brief in a lawsuit that the American Association of Railroads and two local railroads brought against Delaware which claimed the noise emitted from refrigerated trucks mounted on railroad cars violated the state's noise emission limits (251). The Third Circuit Court of Appeals cited EPA's brief, which argued the state was preempted from regulating, as the reason for affirming the district court's injunction against state enforcement, (252) But when Delaware appealed the case to the Supreme Court, the Solicitor General told the Court that government's position was legally erroneous and he asked the Court to remand the case back to the Circuit Court for reconsideration. (253) After the remand, the Third Circuit reversed itself and held that Delaware could enforce its regulation. (254)

While it might be expected that the Third Circuit's decision has clarified the power of local governments to regulate some aspects of railroad operations, the matter may still represent a muddle to many localities. An EPA official attributes the lack of local regulatory activity, in part, to the fact that many localities may have not heard about the decision. (255)

C. Policy Options

State and local noise regulation lacks a bright future unless the federal government reestablishes the type of scientific, technical, training, educational, and other "infrastructure" activities that EPA supported at the end of the 1970s. Far from usurping local initiative, federal support is necessary to empower communities to act against noise pollution. It is less clear what actions EPA (or Congress) should take regarding federal preemption, but some reduction in federal preemption appears possible.

1. Infrastructure Support

If the cost of starting and maintaining noise control programs was lowered, cities and states would be more likely to increase their noise abatement efforts. Federal involvement would also lower the national cost of abatement. Moreover, EPA's experience in the 1970s suggests that a worthwhile program could be established at a fairly low cost to the federal government.

The panel of experts convened by NIH (256) and a NIOSH report (257) called for reestablishing the type of infrastructure activities that EPA supported while ONAC operated. This conclusion is supported by noise consultants, (258) health professionals, (259) and local regulators, (260) although there is some disagreement concerning what steps EPA should take. For example, some professionals support establishing a computerized database of technical information that they can easily access, (261) but others believe this would not be a useful step. (262) The NIH and NIOSH reports also recommend a comprehensive program of public education concerning noise with special attention directed towards school-age children. (263) And EPA's Scientific Advisory Board (SAB) has noted as a general matter that EPA should improve public understanding of environmental risks as one of its strategies for risk reduction. (264)

Congress would not have to locate federal infrastructure activities in EPA. Two arguments can be made on behalf of location in other agencies. First, some previous management officials in EPA have not been enthusiastic about its noise abatement mission. (265) Second, since EPA's primary mission is standard setting, the research and educational aspects of noise abatement would be better served if they were delegated to agencies that had research and education as primary objectives.

There are also good reasons for reestablishing EPA as the home of infrastructure efforts. While some infrastructure activities can be moved to other locations, others are not easily relocated. Congress could give the National Institutes of Environmental Health Sciences responsibility for health-related noise research and some other agency in the Department of Health and Human Services (HHS) the responsibility for public education (266) but there is no obvious alternative home for infrastructure activities, such as producing model ordinances, establishing universal measurement standards, and training enforcement personnel. (267) Congress could establish a new agency, modeled on the National Institute for Occupational Safety and Health (NIOSH), which performs similar functions concerning occupational safety and health, but the small scale of federal activities in this area may not justify a separate agency for that purpose.

In addition, parceling out infrastructure activities would make them less effective than locating them at EPA. If some infrastructure activities remain at EPA, locating others elsewhere would create coordination difficulties. For example, when the NCA was passed, Congress expected that EPA would be able to rely on noise research conducted by other agencies, but EPA found that because the other agencies followed their own research agendas, they produced very little research relevant to EPA's purposes. (268) Moving all infrastructure functions to a new agency would solve this type of problem, but there would be other coordination difficulties if EPA retains any regulatory functions. (269) OSHA'S experience indicates this difficulty. OSHA and NIOSH have had continuous coordination difficulties because the former is located in the Department of Labor and the latter is in HHS. (270)

Finally, EPA may be ready to turn over a new leaf regarding its attitudes towards infrastructure activities, if not noise abatement itself. The Scientific Advisory Board recently called on EPA to recast its mission to include not only a wider variety of environmental hazards, but also a greater variety of regulatory tools. (271) In particular, the SAB recommended that EPA use a Welfare risk paradigm that recognizes "social nuisances" such as "odors, noise, and reduced visibility" that may or may not affect human health. (272) The SAB was not suggesting that noise might not also pose a health hazard, but it was saying that EPA should not treat its nonhealth effects as unimportant to environmental protection. (273) The SAB also told EPA that the "most promising strategies for risk reduction encompass a wide range of policy approaches" including scientific and technical measures, provision of information, and cooperation with other agencies. (274)

2. Preemption

Besides reestablishing infrastructure support, EPA should clarify the extent of federal preemption and minimize the scope of it. Clarification will assist local governments to resist erroneous industry claims that cities or states can not act. Minimizing the scope of preemption will empower local governments to act concerning local problems. While some preemption is unavoidable to protect firms from the costs of complying with inconsistent local regulation, there may be more preemption currently than necessary.

Federal regulation creates scale economies for firms that operate in interstate commerce if a uniform federal standard replaces conflicting state and local regulation, (275) and the preemption provisions of the NCA have such a purpose. (276) The disadvantage of preemption is that it can replace more stringent standards preferred by local governments. (277) But companies that operate in interstate commerce, such as product (278) and vehicle manufacturers, (279) and the railroads, (280) insist that they could not operate efficiently without extensive federal preemption. Nevertheless, some forms of local regulation, such as the erection of noise barriers, would appear to have little or no effect on transportation scale economies. (281) EPA could assist local governments by promulgating a standard that would establish criteria for granting special local circumstances exemptions for railroad and truck noise regulation. (282)

III. OPTIONS FOR FEDERAL NOISE ABATEMENT

EPA can assist state and local noise abatement by reestablishing a support infrastructure and narrowing preemption of local regulation. This section evaluates what other abatement responsibility the federal government should undertake and concludes that Congress should fund EPA to implement the NCA, but that the agency should adopt a different regulatory strategy than it used previously.

A. Congressional Options

Congress has three choices concerning the future of the NCA. It must determine whether to continue or repeal it, and, if some or all of the provisions of the NCA are continued, Congress must decide whether EPA, or some other agency, is to be responsible for their implementation.

1. The Future of the NCA

Congress could continue the status quo, repeal the NCA, or fund EPA (or some other agency) to implement it, with or without restrictions on the scope of the agency's jurisdiction. Continuing the status quo saves money, but it also leaves EPA in an untenable position. Because of budget constraints, it can neither effectively enforce existing standards, nor amend them to take account of loopholes and other deficiencies that have been identified. Moreover, continuing the status quo prevents state and local governments, to some extent, from filling the regulatory void that the lack of funding has created.

Congress could repeal the NCA, or at least its preemption provisions, and free states and local governments to regulate more strictly, if they wish. But this choice merely recreates the conditions that led to passage of the NCA in the first place. As noted previously, preemption can provide important scale economies for firms that operate in interstate commerce. (283) Thus, unless Congress is prepared to forgo these economies of scale, a federal agency must be funded to enforce and, if necessary, update current regulations.

Congress could fund EPA (or some other agency) only to update and enforce current regulations. Or it could limit federal jurisdiction to regulate in some other manner. For example, the federal government could address only transportation noise. (284) Besides saving money, this approach has the advantage of maximizing the extent to which state and local governments would be free to regulate. Ultimately, however, this approach would be self-defeating. Additional targets for regulation exist, (285) and if state and local governments receive the informational and technical support recommended in the previous section, they will establish additional regulation. Demands by industry for federal preemption will quickly follow and Congress will have accomplished little by failing to have the federal government address these noise sources in the first place.

2. Location of Regulatory Activities

Congress could transfer EPA's regulatory responsibilities to other agencies which have mandates related to the regulation of transportation services and consumer products. But such a rearrangement would not increase the effectiveness of federal efforts. Locating NCA standard-

setting in other agencies has some advantages. Congress could delegate to DOT the authority to establish noise emissions standards for transportation. (286) This change would avoid the coordination problems that arise from splitting the responsibility to abate traffic noise between EPA and DOT, and it would permit DOT to coordinate more, easily the use of other highway noise abatement techniques, such as noise barriers, with reliance on emissions controls. Congress could assign to the Consumer Product Safety Commission (CPSC) the regulation of nontransportation products and to OSHA the labeling of hearing protection equipment. Since CPSC's mandate is to protect consumers from dangerous products, (287) the regulation of product noise emissions is congruent with its mission. Delegating to OSHA the responsibility to regulate hearing protection equipment makes sense since most consumers of protection equipment are employers and OSHA'S hearing conservation standard depends on the accuracy of the labels used on hearing protection equipment. (288)

There are, however, also good reasons for leaving standard-setting at EPA. First, Congress would lose the synergism that is produced by placing most aspects of noise abatement in EPA. Conversely, dividing up the federal government's abatement activities will create substantial coordination difficulties. Assuming that EPA resumed support of an infrastructure for local regulation, four different agencies (DOT, CPSC, OSHA, and EPA) would be involved in noise abatement under the previous proposals. Second, parcelling out responsibilities to four different agencies will result in at least some duplication of staffing. third, reassigning EPA's regulatory responsibilities will not necessarily result in more effective regulation since both DOT and CPSC have some liabilities that EPA does not share. For example, to the extent that DOT has responsibilities to promote transportation, as well as regulate it, it may lack the same credibility and motivation in regulating noise that EPA would have. (289) Moreover, CPSC'S effectiveness has been questioned over the years. (290)

While there are arguments for locating EPA's regulatory responsibilities in other agencies, the coordination problems that would result counsel against such a step. If the purpose of a reorganization is to make the government's abatement efforts more effective, that result can hardly be accomplished by splintering responsibilities now primarily located in one agency into four different ones. While it is true that EPA managers were not always genial hosts to ONAC, as the prior discussion noted, (291) there are reasons to believe that agency managers will take this responsibility seriously. Moreover, there is no reason to believe that DOT or CPSC would be more committed to noise abatement, or would be more effective as regulators.

B. EPA's Options

Since EPA should retain the responsibility for implementing the NCA, it is important that the agency carefully assess its abatement options. This section evaluates EPA's options for implementing these responsibilities in terms of risk assessment and management, and coordination and oversight.

1. Risk Assessment and Management

Risk assessment is a two part process involving hazard assessment, or determining what degree of harm a noise source poses, and exposure assessment, or estimating the number of persons who

will be exposed to harmful or annoying levels of emissions. (292) EPA has previously identified emissions levels that are harmful to health or are disruptive, (293) and its last noise survey, completed in 1981, constituted an exposure assessment. (294) Earlier it was recommended that EPA acquire up-dated exposure data. (295) It should also update its risk assessment to reflect what else has been learned about the health consequences and other effects of noise pollution since 1981. (296)

As part of its risk assessment, EPA should rank significant sources of noise according to their relative risk. (297) Since EPA is unlikely to have funding to pursue more than a few abatement projects, it is important that the agency pursue those noise sources that pose the most significant problems. A former ONAC official concedes that although the noise program had criteria to choose which noise sources required regulation, it did not attempt to rank noise sources chosen for regulation in terms of which should be regulated first. (298)

Risk management involves selecting the most appropriate strategy to reduce emissions to the level required by the agency's mandate. (299) Whereas ONAC thought primarily, if not exclusively, in terms of emissions standards as a regulatory response, any new regulatory program should consider emissions standards as a last resort. Before promulgating an emissions standard, EPA should determine whether market forces, or local or state regulation, can be utilized to reduce product or transportation noise. (300) During its tenure, ONAC did not undertake the type of comprehensive assessment of risk management options recommended here. (301)

a. Market Forces

Market forces have a role to play in noise abatement, but the utility of this approach depends on whether a consumer's choice about how much noise he or she will tolerate also impacts on third parties. This section explains how EPA can expand the use of product labeling and the limitations of this approach.

The extent of noise pollution is a function of the level of consumer demand for quieter products because properly functioning markets will supply the amount of noise abatement demanded by consumers. (302) A market will not function properly, however, if product noise information is expensive to acquire. (303) EPA can lower consumer search costs by educating the public concerning the potential harms of noise and by promoting noise labeling. Consumers would benefit from labeling that reveals the level of noise emissions, such as labels that specify the amount of noise emitted by appliances, and from labeling that reveals the level of noise suppression, such as labels that specify the extent to which various grades of windows attenuate noise. (304)

Increased noise labeling would not necessarily require EPA regulation. As EPA educates consumers concerning the value of quieter products, some sellers will respond by providing noise information. Nevertheless, because other sellers may limit or lie about the noise information they provide, (305) regulation may be necessary to ensure adequate disclosure. EPA, however, has an important role to play even in cases of voluntary disclosure. EPA can make the voluntary disclosure of information more effective by working with an industry to promote measurement

accuracy and to ensure that noise information is provided in a manner that ensures consumers can understand it and use it to compare the performance of products. Uniformity in labeling is particularly important. Consumers are unlikely to be able to use noise labels effectively if product labels for different products use different methods of disclosure.

ONAC'S experiences with lawn mower noise emissions illustrates the potential of the previous approach as well as some of its pitfalls. Although ONAC declared lawn mowers to be a significant noise source, (306) it agreed to postpone an emissions standard if the industry would engage involuntary labeling. (307) The labeling program remains in effect today, but consumers have shown little interest. (308) The industry claims that this tepid response indicates that consumers understand that lawn mowers do not pose significant risks, (309) but it is also possible that consumers are not interested in the labels because the disclosure program was implemented at the same time that EPA stopped its efforts to educate consumers about the risks of noise. (310) As noted earlier, an NIH panel has found that consumers are ill-informed about the risks posed by noise. (311) Moreover, even if some consumers would ignore the labels, commercial purchasers (312) and consumers who are sensitive to environmental issues (313) would likely use such information.

Market forces can be used to abate noise emissions in other ways as well. The NCA authorizes EPA to assist other agencies in purchasing quieter products, as an inducement for their creation and manufacture. (314) The usefulness of this approach, however, is limited by the fact that it can not be used for products for which there are no EPA emissions standards. (315) A better approach would be for Congress to authorize EPA to designate low noise products for purchase by the government without the requirement that an emissions standard exist for such products. (316) EPA could also recommend to Congress and state legislatures that they establish tax or other incentives for companies to reduce noise emissions. (317)

Although market forces have a role to play in noise abatement, not every noise problem is suitable for the previous approaches. Consumer education and labeling empowers consumers to decide for themselves what level of noise protection is appropriate, but if the consumer's choice also impacts adversely on third parties, some form of abatement regulation may be necessary. (318) The problem of lawn mower noise is again instructive. The noise from lawn mowers affects their owners, but it is also heard by others who are nearby. Unless home owners purchase quieter mowers for their own reasons, or at the behest of their neighbors, third parties will be unprotected from lawn mower noise. (319)

Where third party effects exist, it is still possible to rely on market incentives to reduce noise. Instead of promulgating an emissions standard, Congress could authorize EPA to assess a tax on products that exceeded certain noise levels. This approach has been used with some success by some local airport operators, (320) and has received attention generally as a more efficient approach to reducing pollution. (321)

b. State and Local Regulation

Although noise-reduction regulation may be necessary in cases involving an impact on third parties, this does not mean the EPA regulation is necessary. States and local governments have at

their disposal under current laws a wide range of regulatory tools--such as landplanning, noise barriers, time and place restrictions--that may not create an impediment on interstate commerce. This fact suggests that EPA should promulgate emissions standards only if local regulation will be ineffective or present a burden on interstate commerce.

The example of lawn mower noise can be used one more time. Although some persons who are informed about noise will purchase quieter lawn mowers, others will not. If the impact of the residual noise on third parties is significant, additional noise reduction will require government action. Whether local regulation will be adequate depends on the nature of the problem. If the problem is largely one of annoyance, a city could implement time and place restrictions. If, however, the noise is sufficiently loud to have significant adverse health effects, some form of emissions regulation could be necessary. Only in this last case would EPA regulation arguably be necessary to protect the public and guarantee uniform national treatment of lawn mower manufacturers. (322)

Evaluating the potential of local regulation has several advantages for EPA. First, it will save scarce EPA resources for noise problems that can not be addressed other than by federal efforts. As a related matter, EPA will be less likely to promulgate standards, like the garbage truck regulation, that are opposed by some local noise officials, without considering the merits of this opposition. (323) Second, it invites EPA to work closely with those officials. Finally, it would permit EPA to integrate its support of an infrastructure for state and local regulation with its priority-setting process. Once EPA decided to rely on local regulatory efforts, it could then design support activities that would assist local governments in achieving the desired noise abatement.

A noise problem might also be addressed through a combination of market incentives and local control. Garbage truck noise illustrates this possibility. Many communities have the option of prohibiting garbage pickup while most residents are sleeping. Where this is not true, such as urban areas where day-time pickup is infeasible, EPA could take another tack. It could write a model contract specification that cities could use to purchase trucks that are lower in noise.

c. EPA Discretion

Although EPA should make emissions standards the regulatory tool of last resort, the NCA may prevent part of this approach. EPA has the discretion under the NCA to require labeling for noise sources whether or not they have been designated as "major" noise sources. (324) The NCA, however, appears to require EPA to regulate any product identified as a "major" noise source, even if state and local regulation might be adequate to protect the public. Under the NCA, once EPA identifies a product to be a "major" noise source, it must promulgate emissions standards within the. Short time deadlines specified in the act. (325) EPA, however, might avoid this result by defining "major" noise source to mean any source that requires a federal emissions standard for successful abatement or for purposes of preemption. (326) This interpretation would give EPA the flexibility to pursue noise abatement through alternative methods, while reserving the possibility that the agency would use an emissions standard if other techniques were unsuccessful. (327) If the NCA can not be interpreted in this manner, Congress should amend it to give EPA this flexibility. EPA's implementation of the NCA could also be hindered by the

deadlines the NCA sets for promulgating emissions standards. ONAC missed most of these deadlines because they were unrealistically short given the size of its staff and the difficulty of writing the regulations. (328) The wisdom of statutory deadlines is the subject of considerable debate. Deadlines can improve legislative oversight, (329) enable courts to determine more easily when agency action is unreasonably delayed in violation of the Administrative Procedure Act (APA), (330) and mitigate pressures on an agency to move slowly. (331) But, as in the case of the NCA, these advantages are often lost because Congress sets unrealistically short deadlines. A better approach would be to require EPA to set its own rulemaking deadlines and then make these deadlines judicially enforceable. (332) This would permit it to set realistic deadlines, (333) while still holding it accountable. (334)

d. Decisionmaking Procedures

EPA should use consensus building procedures, such as advisory committees, workshops, and negotiated rulemaking, to implement the risk assessment and risk management processes recommended above. Because advisory committees can explain complex technical issues, provide peer review for tentative decisions, identify areas of consensus among scientists and engineers, and expand the participation of interested experts and affected citizens in agency decisionmaking, (335) they can improve the credibility of agency decisions, and thereby increase their acceptance. (336) This last advantage might be particularly important since EPA would be attempting to restart a program that received significant criticism from the professional community when it last operated. (337) Some of the same advantages can be obtained in a less formal and structured manner by inviting professionals, members of the regulated industry, public interest groups, and others, to participate in workshops, such as the meetings of local noise officials and noise professionals held late in ONAC'S tenure. (338) Such ad hoc arrangements, however, might not be as credible as establishing a permanent advisory committee that could give continuous peer review. (339)

EPA could also use negotiated rulemaking in circumstances where the Conference has recommended that its use can be constructive. (340) EPA has used successfully used this procedure previously to implement its other statutory responsibilities. (341) While negotiated rulemaking works best in certain types of situations, some of the issues that might come up in future noise regulation, such as a standard creating a process for exemptions for local communities to regulate railroad yard noise, (342) appear suitable for this process. (343)

2. Coordination and Oversight Functions

EPA should also resume its coordination and oversight functions. Specifically, it should coordinate the noise abatement activities of other government agencies, facilitate private and international standard setting activities, and rethink the regulatory basis for airport noise abatement.

The importance of coordination of the federal government's noise abatement activities is difficult to judge since the extent of such activities has not been catalogued since ONAC was abolished. Nevertheless, even if the federal government's activities are fairly limited, coordination could extend limited resources by promoting the sharing of information and the elimination of

duplication. The Scientific Advisory Board has recommended that EPA in general should do more to foster cooperation among government entities responsible for reducing pollution, (344) and the NIH panel concluded that "reestablishment of a federal agency coordinating committee with central responsibility for practical solutions to noise issues is essential." (345)

EPA also has a role to play concerning national and international standardization activities. (346) The Acoustical Society of America and other similar professional groups have been active for many years in working with the American National Standards Institute (ANSI) to develop consensus standards concerning noise and vibration control. (347) Although ONAC has been criticized for ignoring private standardization activity, (348) there is opposition to governmental involvement in such activity, (349) except to support travel and other expenses of individuals who attend national and international standard-setting conferences. (350) These persons would like the government to support such activities and use the results, but not attempt to influence the outcome. (351)

The problem with limiting EPA's role in this manner is that the membership of most private groups interested in developing consensus standards is largely composed by representatives of noise producers, including governmental noise producers such as the Air Force and Navy. (352) If persons without a vested interest are represented at all, they are represented by a few university professors and consultants. (353) Thus, EPA's participation in such activities might bring additional balance and produce a result that the agency is more likely to be able to use. The same objective might be accomplished if EPA supported the expenses of citizens, professors, or consultants, who are not associated with noise producers. Whether or not EPA actively participates in private standard-setting activities, it should work with private organizations to identify potential projects that would benefit both private industry and the government.

EPA regulations should be congruent with international regulatory standards if possible. This prevents domestic manufacturers from having to meet different regulatory standards in the United States and abroad. Further, it places EPA in a position to work with other regulatory authorities, such as the European Community, in adopting regulatory standards which protect the public, and yet do not serve as trade barriers. (354) ONAC previously engaged in some of these activities. (355)

The final coordination issue is what role, if any, EPA should have concerning airport noise abatement. Since ONAC was abolished, this issue has been complicated by changes in the FAA's regulatory powers. In the waning moments of the 1990 session, Congress forbade airport operators from enacting noise abatement measures concerning the newest generation, of airplanes unless they have been approved by the FAA. (356) The legislation was sought by the airlines and air cargo industry because of the proliferation of local noise restrictions including evening and night-time curfews and requirements that aircraft operators pay taxes for emitting noise above specified levels. (357) Citizen groups and local elected officials, who are upset over the bill's passage, (358) have expressed an interest in having EPA superintend the FAA's implementation of its new powers. (359) The new legislation, however, does not establish any role for the EPA concerning the FAA's new powers. Nevertheless, EPA's authority under the NCA to coordinate federal noise abatement activities would arguably authorize it to participate in the FAA's implementation of its new powers. (360)

EPA can improve aircraft noise abatement, but not by attempting to supervise how the FAA implements its new powers. As the original director of ONAC points out, "It is difficult if not impossible for one federal agency to coordinate another federal agency's programs and actions." (361) EPA and FAA officials disagree concerning whether EPA oversight has increased noise abatement, but one undisputed legacy is FAA's continuing hostility concerning EPA's supervisory efforts. (362) An EPA approach to aircraft noise abatement that avoids direct confrontation with FAA is therefore more likely to be successful.

EPA has such a road open to it. FAA regulatory actions are built on scientific and policy conclusions reached by ONAC before it went out of business. As originally recommended by ONAC, (363) FAA defines areas impacted by aircraft noise as areas with noise levels of 65 Ldn or greater, (364) but citizens living outside of such areas are often among the most vocal opponents of aircraft noise. (365) Critics claim these complaints reflect the fact that the FAA does not take into account the low residual sound in suburban or semi-rural areas, or the intrusive nature of single events, such as a early morning takeoffs while residents are sleeping. (366) In light of these complaints, EPA should evaluate the adequacy of current measurement methods and determine whether additional or new measures would do a better job than the Ldn 65 metric.

A reevaluation would be a useful for two reasons. First, EPA's results are more likely to be generally accepted since EPA does not share the FAA's institutional conflict of interest. (367) Second, if EPA demonstrates that the scientific and policy basis on which the FAA is proceeding is no longer valid, the FAA would presumably conform its approach to the new metric or risk having its approach overturned in court.

IV. CONCLUSION

The NCA is by any measure a public policy failure. In the NCA'S first decade, EPA had made a reasonable start in implementing the Act, but it was a long way from finishing its noise agenda at the time ONAC was disbanded. Some emissions standards were promulgated, but fewer than the significant noise sources identified by EPA as requiring regulation. Almost no progress was made concerning labeling or purchase by the federal government of low noise products. ONAC made significant strides concerning scientific and technical research, coordination, support of local and state noise abatement, and noise education, but funding was eliminated just as the initial fruits of these labors became apparent. The second decade of the Act has been marked by almost no federal noise abatement activity, and with a marked decline in state and local activity. EPA is barely able to enforce its regulations, and fiscal limitations prevent it from updating them although several are out of date or inadequate to protect the public.

Despite this desolate picture, there has been little public outcry primarily because noise pollution lacks the type of strong, organized public constituency that fights other types of pollution, and because EPA has acquiesced in its lack of funding. In the meantime, noise pollution apparently remains at levels equal or above the last estimate in 1981, when it was significant.

The 10 year hiatus in implementing the NCA gives EPA the time and distance necessary to identify and avoid the mistakes ONAC made. Unlike previously, EPA should consider emissions standards as a last resort to be used only if market-related approaches and state and local regulation are likely to fail. This approach requires EPA to support nonregulatory activities which minimize the need for federal regulation, such as an infrastructure for local abatement and liaison with private standard-setting organizations.

The NCA'S goal of a quieter country does not deserve the irresponsible treatment that Congress and the EPA gave it. EPA can redeem itself by showing how a modest program employing thoughtful public policy can improve the health and welfare of its citizens. Such a step would not only reduce noise pollution, but it would speak loudly of EPA's dedication to environmental protection.

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