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eral jurisdictional element was not required to sustain a conviction for conspiracy. In *United States v. Feola*[109] the Supreme Court reasoned that, in a case involving a charge of conspiracy to assault a federal officer,[110] the purpose for punishing inchoate crimes would not be served by requiring specific knowledge of the "federal" aspect of the crime.[111] The conspiracy to assault was equally dangerous to society whether the person assaulted was a federal officer or another official.[112]

Thus, the question of intent posed in *LeFaivre* has been answered, but the issue of the nature and extent of interstate activity is still subject to differing interpretations. The Travel Act was passed to combat the interstate activities of organized crime.[113] Given the mobility of the population and the existence of many multi-state metropolitan areas, a significant amount of criminal activity, historically subject to state control, will involve travel and use of facilities in interstate commerce.[114] Therefore, definitive guidelines are needed governing the exact volume and quality of interstate activity necessary to invoke federal jurisdiction under the Travel Act.

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VIII. ENVIRONMENTAL LAW

EPA Efforts to Compel the States to Legislate

The Clean Air Act, 42 U.S.C. § 1857,[1] established a system of

[109] 420 U.S. 671 (1975).
[110] 18 U.S.C. § 111 (1970).
[111] 420 U.S. at 694.
[112] *Id.* at 692-93.
[113] Rewis v. United States, 401 U.S. 808, 811 (1971).
[114] *Id.* at 812.

[1] The Clean Air Act, 84 Stat. 1676, *amending* 42 U.S.C. §§ 1857 *et seq.* (Supp. V, 1965-69) (codified in scattered sections of 42 U.S.C. § 1857 (1970)). The Clean Air Act was substantially revised and amended in 1970. For the history of the Clean Air Act, *see* Picadio, *An Introduction to the Law of Air Pollution Control in Pennsylvania*, 44 PA. B. ASS'N Q. 203 (1973); Note, *Review of EPA's Significant Deterioration Regulations: An Example of the Difficulties of the Agency-Court Partnership in Environmental Law*, 61 VA. L. REV. 1115, 1115-18 (1975).

The scheme of the Clean Air Act is complex. The Act established primary and

federal air pollution control with regulatory programs developed by each state rather than a single national plan.[2] Recent regulation by the Environmental Protection Agency (EPA) has caused the states[3] to challenge the scope of the EPA's statutory authority[4] under the Clean Air Act. Pursuant to § 110 of the Act,[5] the Administrator can recommend regulations to the states, and, if a state plan is inadequate, the EPA must promulgate its own plan to be imposed upon the state. Under the specific sanctions of § 113,[6] the Administrator is authorized to enforce either a state or an EPA air pollution plan, but the EPA cannot force the states to adopt the plan promulgated by

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secondary ambient air quality standards. § 109(b)(2), 42 U.S.C. § 1857c-4(b) (1970). The states were to propose plans to achieve these standards and to implement these plans themselves. § 110(a)(1), 42 U.S.C. § 1857c-5(a)(1) (1970). The Environmental Protection Agency's (EPA's) Administrator must approve or disapprove these state plans. If he disapproves, he must submit proposed EPA regulations to the states. If the state plan remains inadequate, the Administrator must promulgate those regulations which embody an EPA implementation plan. §§ 110(a)(2), (c), 42 U.S.C. §§ 1857c-5(a)(2), (c) (1970). The EPA plan will be imposed upon the states through independent enforcement by the EPA. Section 113, 42 U.S.C. § 1857c-8 (1970), *as amended*, 42 U.S.C. § 1857c-8 (Supp. IV, 1974), provides the Administrator with enforcement power against "any person" who violates or refuses to comply with any order under the Act. Neither § 110 nor § 113 specifically authorizes the EPA to require a state to legislate for the state's or the EPA's pollution control plan.

[2] Each state is required to submit its own implementation plan to the EPA. § 110(a)(1), 42 U.S.C. § 1857c-5(a)(1) (1970). The administrator may disapprove parts of this plan and supplement it with EPA regulations, but apparently the intent is that maintenance of air quality standards be both planned and effected by the states themselves. *See* notes 29, 37 and 46 *infra*.

[3] *See* District of Columbia v. Train, Civ. No. 74-1013 (D.C. Cir. Oct. 28, 1975); Maryland v. EPA, Civ. No. 74-1007 (4th Cir. Sept. 19, 1975); Brown v. EPA, 521 F.2d 827 (9th Cir. 1975); Pennsylvania v. EPA, 500 F.2d 246 (3d Cir. 1974).

[4] The states' objections to EPA authority were based primarily on the constitutionality under the commerce clause, U.S. CONST. art. I, § 8, cl. 3, of the agency's requirements. Federal violations of the commerce clause power and infringement of state sovereignty, U.S. CONST. amend. X, were the basic issues raised by the states. In each case, however, the circuit court decided the case exclusively by statutory construction of the Clean Air Act. *See* note 3 *supra*. While each of the four courts considered the constitutional issues raised, all adhered to the doctrine that:

> if a case can be decided on either . . . a constitutional question . . . [or] a question of statutory construction or general law, the court should decide on the basis of the latter.

Maryland v. EPA, Civ. No. 74-1007 at 36, *citing* Alma Motor Co. v. Timken Co., 329 U.S. 129, 136 (1946).

[5] 42 U.S.C. § 1857c-5 (1970).

[6] 42 U.S.C. § 1857c-8 (1970), *as amended*, 42 U.S.C. § 1857c-8 (Supp. IV, 1974). Under § 113(c), any "person" who violates an air pollution regulation may be fined by the EPA up to $25,000 per day or imprisoned up to one year, or both.

the EPA. Basing their arguments on these sections, Maryland,[7] the District of Columbia,[8] California,[9] and Pennsylvania[10] have each objected to EPA directives ordering the states to enact various air quality regulations and implementation plans.

In *Maryland v. EPA*,[11] Maryland had submitted a proposed state plan for control of motor vehicle emissions and maintenance of ambient air quality standards.[12] Pursuant to statutory authority,[13] the EPA Administrator approved some portions of the plan, disapproved others, and made additions to the plan. Asserting that the Maryland plan lacked sufficient provision for legal authority to enforce the necessary air quality standards,[14] the EPA ordered Maryland to submit to the EPA proposed state legislation for enactment and enforcement of the state pollution plan. Under § 307 (b)(1) of the Clean Air Act,[15] Maryland sought review of the EPA Administrator's actions in federal circuit court.[16]

Maryland objected to the administrative requirement that it legislate and that it do so under threat of civil and criminal penalties.[17]

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[7] Maryland v. EPA, Civ. No. 74-1007 (4th Cir. Sept. 19, 1975). *See* text accompanying notes 11-25 *infra*.

[8] District of Columbia v. Train, Civ. No. 74-1013 (D.C. Cir. Oct. 28, 1975). *See* text accompanying notes 26-36 *infra*.

[9] Brown v. EPA, 521 F.2d 827 (9th Cir. 1975). *See* text accompanying notes 37-44 *infra*.

[10] Pennsylvania v. EPA, 500 F.2d 246 (3d Cir. 1974). *See* text accompanying notes 45-50 *infra*.

[11] Maryland v. EPA, Civ. No. 74-1007 (4th Cir. Sept. 19, 1975), was consolidated with several other cases for review of certain regulations promulgated by the EPA. The Fourth Circuit disposed of most of the questions raised concerning specific proposed regulations. Civ. No. 74-1007 at 13-28. Under § 307(b)(1) of the Clean Air Act, 42 U.S.C. § 1857h-5(b)(1) (1970), Maryland brought suit for review of these regulations in the federal court of appeals. Section 307 provides that such cases be brought directly to the federal court of appeals. There is, therefore, no district court opinion for *Maryland*.

[12] Under the requirements of the Clean Air Act, a state must promulgate regulations and must propose a plan for enforcing these regulations. § 110(a)(1), 42 U.S.C. § 1857c-5(a)(1) (1970).

[13] §§ 110(a)(2), (c), 42 U.S.C. §§ 1857c-5(a)(2), (c) (1970). *See* Civ. No. 74-1007 at 9.

[14] Civ. No. 74-1007 at 28. Section 110(a)(2)(F), 42 U.S.C. § 1857c-5(a)(2)(F) (1970) requires that a plan have the "necessary assurances that the State will have . . . authority to carry out such [an] implementation plan." The Administrator seemed to rely on this requirement and his power to supplement a state plan, *see* note 13 *supra*, to authorize his order that Maryland legislate to provide appropriate enforcement procedures.

[15] *See* note 11 *supra*.

[16] Civ. No. 74-1007 at 5.

[17] *Id.* at 6 and 29.

Nevertheless, the Administrator asserted authority under the commerce clause[18] and § 110(c) of the Clean Air Act,[19] which empowered the Administrator to promulgate regulations and impose an EPA plan on the state.[20] The Fourth Circuit based its decision in *Maryland* on a construction of § 110. The court recognized that the Administrator could submit the agency's regulations to the states and assumed that, under § 110, the Administrator also had the power to impose the agency's pollution control plan on a state.[21] Yet, the court stated that there is no express statutory authority for directing a state to legislate.[22] The Fourth Circuit reasoned[23] that to avoid "federal interference" the state could implement either its own plan or the EPA's program.[24] Without any express statutory power, however, the court

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[18] Regulation of air pollution is considered a legitimate federal concern under the commerce clause power. U.S. CONST. art. I, § 8, cl. 3. *See* Brown v. EPA, 521 F.2d 827 (9th Cir. 1975); United States v. Bishop Processing Co., 287 F. Supp. 624 (D. Md. 1968), *aff'd*, 423 F.2d 469 (4th Cir.), *cert. denied*, 398 U.S. 904 (1970); Edelman, *Federal Air and Water Control: The Application of the Commerce Power to Abate Interstate and Intrastate Pollution*, 33 GEO. WASH. L.REV. 1067 (1965).

[19] 42 U.S.C. § 1857c-5(c) (1970).

[20] The Administrator further argued that practicality and efficiency required that the states, not the federal government, implement air pollution plans. Civ. No. 74-1007 at 29-30, 38. *See* note 50 *infra*. Since the Clean Air Act requires states to submit plans, seemingly the states should also enforce them. *See* S. REP. No. 91-1196, 91st Cong., 2d Sess. 20 (1970); H. R. REP. No. 91-1146, 91st Cong., 2d Sess. 9-10 (1970), *reprinted at* 1970 U.S. CODE CONG. & AD. NEWS 5356. But the legislative history is ambiguous. *See* Brown v. EPA, 521 F.2d 827, 835-37 (9th Cir. 1975). That it was intended that the states construct and operate their own maintenance and inspection centers seems clear. It is unclear, however, if the state refused to provide legislation for such plans, whether the EPA could force the state to comply or could impose sanctions on the state.

[21] Civ. No. 74-1007 at 37.

[22] *Id.* at 38. Section 110 of the statute, 42 U.S.C. § 1857c-5 (1970), in fact, suggests only that the Administrator promulgate new or revised regulations for a state "to consider". Civ. No. 74-1007 at 38, *citing* Appalachian Power Co. v. EPA, 477 F.2d 495 506 (4th Cir. 1973). Presumably, therefore, a state could refuse to submit a plan using the EPA regulations. The EPA's remedy would lie only in promulgating and enforcing its own implementation plan. The Fourth Circuit concluded that the "EPA [had] simply construed the statute to suit its administrative convenience with a direction to Maryland to perform, leaving no alternative." Civ. No. 74-1007 at 40.

[23] Civ. No. 74-1007 at 41.

[24] Under § 110, 42 U.S.C. § 1857c-5 (1970), alternatives to a federally imposed pollution program are offered. The Fourth Circuit indicated that Maryland could be "invited" to enforce these regulations but could not be compelled to do so under threat of the sanctions in § 113, 42 U.S.C. § 1857c-8 (1970), *as amended*, 42 U.S.C. § 1857c-8 (Supp. IV, 1974). The *Maryland* decision, however, made little reference to the issue of compelling state enforcement, as opposed to enactment, of EPA pollution control plans. *Id.* at 41-42. *See* note 62 *infra*.

held that the Administrator could not order a state to legislate in accordance with EPA regulations.[25]

The Fourth Circuit's construction of the Clean Air Act in *Maryland* and its concomitant limiting effect upon the power of the EPA is in accord with the holdings of other circuit courts which have been presented with similar issues. In *District of Columbia v. Train*,[26] the District of Columbia objected to a requirement that the District legislate, under the threat of penalties against District officials, in support of a pollution plan promulgated by the EPA.[27] Because the regulations in the EPA's proposed plan required state legislation, the circuit court in *Train* pointed out that the District of Columbia's refusal to enact parts of the plan would immediately result in a violation of the regulations.[28] The *Train* court refused to allow such a broad interpretation of the Clean Air Act. Since there is no specific section of the Act which authorizes the Administrator to require states to enact the regulations,[29] the court concluded that § 110 defines the extent of the Administrator's authority.[30]

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[25] Civ. No. 74-1007 at 37-38, 41-42.

[26] Civ. No. 74-1013 (D.C. Cir. Oct. 28, 1975). *Train* was consolidated with similar petitions for review brought by Maryland, Virginia, Fairfax, Alexandria, and Prince William County, Virginia.

[27] *Id.* at 278.

[28] Maryland, Virginia, and the District of Columbia had submitted inadequate plans. Under § 110(c), 42 U.S.C. § 1857c-5(c) (1970), the Administrator can promulgate his own, but he cannot force the states to remedy their own deficient plans. *Train*, Civ. No. 74-1013 at 279-80 and 282; Plan for Arcadia, Inc. v. Anita Assocs., 379 F. Supp. 311 (C.D. Cal. 1973), *aff'd*, 501 F.2d 390 (9th Cir.), *cert. denied*, 419 U.S. 1034 (1974). Therefore, the Administrator, in the EPA regulations, required the states to adopt those regulations, to conduct various studies, and to implement the plan through state agencies. *Train*, Civ. No. 74-1013 at 280. The District of Columbia Circuit Court concluded that:

> Under this federal regulatory scheme, the failure of a state to enact or administer an EPA-imposed program has now become itself a violation of the implementation plan, and the state would supposedly be subject to enforcement proceedings under section 113 if it failed to comply.

Id.

[29] *See* text accompanying note 22 *supra*. The *Train* court stated:

> Had Congress intended to adopt the novel approach of empowering a federal agency to order unconsenting states to enact state statutes and regulations, thereby converting state legislatures into arms of the EPA, it most likely would have made that intent clear in the statute.

Civ. No. 74-1013 at 283.

[30] Civ. No. 74-1013 at 282. Like the Fourth Circuit, *see* note 14 *supra*, the District of Columbia Circuit recognized that § 110(a) requires that the state provide "assurances" that the necessary funds and legal authority to implement the state plan are available. *Id.* at 282 n.20. If the state refuses to provide such assurances, however, the

Since the EPA can impose its own plan upon a state and impose sanctions for violations of the regulations in that plan, the court in *Train* was also presented with the issue of whether a state could be a violator under the Act. The District of Columbia Circuit concluded, however, that the state's failure to enforce these regulations was not a "violation" of § 113.[31] According to the *Train* decision, therefore, § 113[32] could not be used to compel states to enforce EPA regulations.[33] The court stated that the penalty provisions of § 113 apply to individual violators causing pollution and not to states which fail to act.[34] Thus, apparently neither § 110 nor § 113 evidence any congressional intent that states be compelled to legislate. The District of Columbia Circuit vacated, therefore, all EPA regulations which directed the states and the District of Columbia to enact regulations or to take any action[35] to aid promulgation of the air quality plan.[36]

Both the *Maryland* and the *Train* decisions reflected the Ninth Circuit's reasoning in *Brown v. EPA*.[37] In *Brown*, California sought review of an order of the EPA that the state submit the text of proposed legislation in support of the EPA's pollution plan.[38] California

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state plan would be inadequate. Therefore, the Administrator would have to promulgate his own regulations for an EPA plan and the EPA would have to enforce them. § 110, 42 U.S.C. § 1857c-5 (1970). The *Train* court maintained that the EPA could not require the state to provide, through state legislation, funds and legal authority to implement the EPA's plan. Civ. No. 74-1013 at 282 n.20.

[31] The circuit court stated:

> Since widespread violations 'result from' a state's failure to enforce a plan, the language [of § 113] strongly suggests Congress did not believe that inadequate state enforcement was, by itself, a 'violation'.

Id. at 284. The *Train* court maintained that only those individuals actually polluting could be penalized under § 113.

[32] 42 U.S.C. § 1857c-8 (1970), *as amended*, 42 U.S.C. § 1857c-8 (Supp. IV, 1974).

[33] Civ. No. 74-1013 at 283-84.

[34] *Id.* Under § 113(a)(1), the Administrator is to notify the "person in violation" and the state. Notice is also given twice under § 113(a)(2) when a state fails to enforce a plan. Public notice is necessary before federal enforcement begins. The *Train* court concluded that the state is not considered a "violator" under § 113 although its failure to enforce a plan could result in widespread pollution by individuals. Sanctions would be imposed against those individuals and not the state. Civ. No. 74-1013 at 283.

[35] The Administrator's proposed regulations had required the states to perform studies of various pollution control methods and of the devices to maintain air quality standards. *Id.* at 280. The District of Columbia Circuit asserted that these studies must be undertaken by the Administrator when proposed state plans are deficient.

[36] *Id.* at 285.

[37] 521 F.2d 829 (9th Cir. 1975).

[38] In *Brown*, California failed to submit a proposed air pollution control plan to the EPA within the EPA's required time limits. The EPA, therefore, promulgated its own regulations as part of an EPA plan for California and clearly stated that it would impose sanctions on the state for non-enforcement. 521 F.2d at 829.

challenged the EPA's right to impose sanctions on a state for failure to comply with such an EPA directive.[39] Based on its interpretation of § 113 of the Clean Air Act, the Ninth Circuit held that the EPA did not have that right. The *Brown* court reasoned that while the Administrator can impose sanctions on individuals or states which are actually polluting, such sanctions could not be imposed for a failure to enforce an EPA regulation.[40] Penalizing a non-enforcing state, the court determined, evidenced a blatant disregard for federal-state relations,[41] and for the federal-state cooperation[42] encouraged by the Act itself. The Ninth Circuit concluded that the Administrator has statutory power to enforce the regulations in an EPA plan but not to compel a state to enforce and administer the EPA regulations.[43] Thus, if California refused to legislate, the EPA could implement its own plan but could not force the state to enact that EPA plan.[44]

Despite the decisions limiting the Administrator's authority, a Third Circuit decision prior to *Maryland*, *Train*, and *Brown* provided support for the EPA's position in those cases. In *Pennsylvania v. EPA*,[45] the Third Circuit held that sanctions could be directly im-

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[39] *Id.* at 831. The EPA asserted the right to impose sanctions directly upon a state under § 113, 42 U.S.C. § 1857c-8 (1970), *as amended*, 42 U.S.C. § 1857c-8 (Supp. IV, 1974) of the Clean Air Act.

[40] The Ninth Circuit stated:

> the Act, as we see it, permits sanctions against a state that pollutes the air, but not against a state that chooses not to govern polluters as the Administrator directs.

521 F.2d at 832. The Ninth Circuit did not immunize the state from penalties under all circumstances as the District of Columbia Circuit did in *Train*. *See* text accompanying note 34 *supra*. The two courts did agree, however, that § 113 could not be used to force the state to adopt and enforce EPA regulations. *Train*, Civ. No. 74-1013 at 283; *see* note 41 *infra*.

[41] The *Brown* court stated:

> we are not convinced that the section is designed to equip the Administrator with power to sanction the non-enforcing state.
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> Our lack of conviction on this point primarily is grounded in our belief that Congress would not have intended in this obscure manner to take such a step in the light of the delicacy with which federal-state relations always have been treated by all branches of the Federal government.

521 F.2d at 834.

[42] The Clean Air Act embodies a concept of federal-state interaction as opposed to federal direction of state regulation. *See* § 102(a), 42 U.S.C. § 1857a(a) (1970); § 107(a) 42 U.S.C. § 1857c-2(a) (1970); S. REP. No. 91-1196, 91st Cong., 2d Sess. 13 (1970); 116 CONG. REC. 19204 (1970).

[43] 521 F.2d at 834.

[44] *Id.* at 834, 836.

[45] 500 F.2d 246 (3d Cir. 1974). For an analysis of *Pennsylvania v. EPA*, *see* Note

posed upon a state and that the state could therefore be compelled to legislate in support of a pollution plan.[46] In *Pennsylvania*, the state challenged the constitutionality of applying § 113 penalty procedures against a state. The Third Circuit viewed this challenge, however, as a broad issue concerning a state's duty to enforce any EPA air pollution control plan.[47] The court examined § 113 and concluded that the EPA could compel a state to enforce EPA regulations because, the court maintained, the Clean Air Act clearly includes a state within the ambit of § 113.[48] Since the states must maintain local inspection centers, the *Pennsylvania* court further reasoned that both the legislative history of the Clean Air Act[49] and considerations of practicality[50] supported the inference that state and local enforcement were intended by Congress. Thus, the EPA could require a state to legislate, if necessary, to implement the agency's pollution plan.

Despite the reasoning in *Pennsylvania*, however, the Fourth Circuit is in accord with the majority of cases concerning EPA directives

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53 TEXAS L. REV. 380 (1975).

[46] 500 F.2d at 259, 263. Like the Ninth Circuit, the Third Circuit also pointed out the federal-state cooperation encouraged by the Clean Air Act. *Id.* at 258, *quoting* S. REP. No. 91-1196, 91st Cong., 2d Sess. 13 (1970); 116 CONG. REC. 19204 (1970). The Third Circuit, however, interpreted both § 110(a)(2), 42 U.S.C. § 1857c-5(a)(2) (1970), and the legislative history of the Clean Air Act as implying that the states must implement EPA programs and can be compelled to do so.

[47] The Third Circuit stated that "the underlying issue is the power of the Federal Government to require a state to enforce an implementation plan." 500 F.2d at 256.

[48] Section 302(e), 42 U.S.C. § 1857h(e) (1970), defines "person" within the provisions of the Clean Air Act as including "an individual, corporation, partnership, association, State, municipality, and political subdivision of a State." The court in *Pennsylvania* held that this definition was applicable throughout the statute. Thus, the court concluded that the sanctions of § 113, 42 U.S.C. § 1857c-8 (1970), *as amended*, 42 U.S.C. § 1857c-8 (Supp. IV, 1974), could be imposed on a state to compel enforcement. 500 F.2d at 257.

The *Brown* court, on the other hand, rejected such interpretation. *See* note 40 *supra*. The Ninth Circuit in *Brown* contended that §§ 113(a)(1) and (a)(2) were "designed to vest the Administrator with power to enforce a state implementation plan should the state fail to do so." 521 F.2d at 834. Such authority was not, however, so broad that it could be applied to the states as well as to individuals.

[49] *See* note 46 *supra*.

[50] The Administrator argued in *Pennsylvania*, as in *Maryland*, Civ. No. 74-1007 at 29-30, that it would be inefficient for the federal government to construct and maintain inspection stations and to enforce locally the EPA regulations within the state. 500 F.2d at 257-58, 262-63. The Third Circuit agreed with this argument in its decision that states could be compelled to enforce an implementation plan. *Id.* at 257. While a practicality argument may be important, however, it does not provide express authority where such statutory language does not exist. Regardless of why states should be compelled to legislate, the Administrator has no clear statutory power to make such an order. Maryland v. EPA, Civ. No. 74-1007 at 38.

requiring a state to legislate. For example, California challenged the threatened imposition of sanctions directly upon a state for a failure to legislate pursuant to an EPA order.[51] In denying the EPA such power under the Clean Air Act, the Ninth Circuit also recognized that the state could refuse to comply with EPA regulations.[52] Thus, because the Act does not specifically state that the Administrator can require state legislation, the Fourth, Ninth, and District of Columbia Circuits refused to infer such authority. The Third Circuit, however, accepted the Administrator's argument that efficient regulation and a need for local rather than federal control requires that states enact adequate implementation plans.[53]

While the legislative history of the Clean Air Act does suggest local maintenance of air quality,[54] neither the hearings nor the Act itself directly authorize such a requirement. Therefore, the Fourth Circuit, in accordance with the Ninth and the District of Columbia Circuits, has narrowly construed the Clean Air Act and rejected a broad interpretation of the power of the Administrator.[55] As the Fourth Circuit concluded, the Act does not provide authority for the Administrator to direct the states to legislate. Consequently, when a state plan is disapproved or a state fails to submit a plan, the EPA can only promulgate and enforce its own regulations.[56] The agency cannot threaten the states with penalties for such noncompliance.

Despite a lack of statutory authority to compel states to legislate, the EPA was not rendered powerless by the decisions in either *Maryland*, *Train*, or *Brown*. Although the federal government apparently cannot compel a state to legislate, it can compel a state government to enforce federal law.[57] Compelling the states to enforce an

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[51] 521 F.2d at 831. *See* text accompanying notes 37-44 *supra*.

[52] *Id.* at 832.

[53] *See* text accompanying notes 50-51 *supra*.

[54] *See* notes 44 and 47 *supra*. The District of Columbia, Ninth, and Third Circuit all recognized Congressman Staggers' statement that:

> If we left [implementation and enforcement] all to the Federal Government, we would have about everybody on the payroll of the United States. We know this is not practical. Therefore, the Federal Government sets the standards, we tell the States what they must do and what standards they must meet. These standards must be put into effect by the communities and the States, and we expect them to have the men to do the actual enforcing.

116 CONG. REC. 19204 (1970).

[55] Maryland v. EPA, Civ. No. 74-1007 at 41.

[56] *Id.* at 38; Civ. No. 74-1013 at 282-83; Brown v. EPA, 521 F.2d at 834.

[57] Under the commerce clause, U.S. CONST. art. I, § 8, cl. 3, states may be compelled to enforce federal law. *See* Fry v. United States, 421 U.S. 542 (1975); Maryland v. Wirtz, 392 U.S. 183 (1968); South Carolina v. Katzenbach, 383 U.S. 301 (1966); New

EPA plan would conceivably achieve efficient regulation while still maintaining state and local control of air quality standards.[58] The state will have lost the ability to implement its own plan. This loss will have occurred, however, because of the state's failure to meet the statutory requirements which precede federal intervention[59] and not because of federal coercion of state legislation.

The Fourth, Ninth, and District of Columbia Circuits also implied that the EPA lacked authority to compel state enforcement of EPA pollution programs.[60] While only *Brown* actually held that the EPA did not have such authority,[61] similar future holdings can be anticipated from dicta in *Maryland*[62] and *Train*.[63] Nevertheless, federal enforcement power under the commerce and supremacy clauses would seem to negate any such holding.[64] And while the Clean Air Act could be amended to authorize the Administrator to compel state legislation, such a broad grant of power is seemingly unnecessary. Rather, limiting the Administrator's interpretation of EPA power should encourage him to utilize authority specifically granted under § 110 and § 113 of the Clean Air Act and to assert the federal power to compel states to enforce federal law.[65] Effective air pollution con-

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York v. United States, 326 U.S. 572 (1946). The states are not immune to suit brought by the United States. Employees of Dep't Pub. Health & Welfare v. Department of Pub. Health & Welfare of Missouri, 411 U.S. 279 (1973); United States v. Mississippi, 380 U.S. 128 (1965). Also, because the supremacy clause provides that the Constitution and laws made pursuant to its provisions are the supreme law in the United States, after Testa v. Katt, 330 U.S. 386 (1947), the state courts cannot refuse to enforce federal laws on the rationale that those laws issue from a distinct and separate government. *Id.* at 390-91. Thus, while a state need not adopt federal law, the supremacy clause requires a state to enforce federal law.

[58] *See* Maryland v. EPA, Civ. No. 74-1007 at 29-30, 38; note 50 *supra*.

[59] § 110(c)(1), 42 U.S.C. § 1857c-5(c)(1) (1970).

[60] *See* notes 61-63 *infra*.

[61] *See* text accompanying notes 39-43 *supra*.

[62] The Fourth Circuit stated:

> Inviting Maryland to administer the regulations, and compelling her to do so under threat of injunctive and criminal sanctions, are two entirely different propositions.

Civ. No. 74-1007 at 41. The court further asserted that if Maryland would not adopt its own pollution control program then the EPA could impose a federal plan "with federal administration". *Id.*

[63] *See* text accompanying notes 31-34 *supra*.

[64] *See* note 57 *supra*.

[65] The *Train* court pointed out that the EPA is not "powerless" after their decision. The court quoted NRDC v. EPA, 478 F.2d 875, 888 (1st Cir. 1973):

> 'We hold that [§ 110 and § 113] not only empower, but also require, the Administrator to disapprove state statutes and regulations, or portions thereof, which are not in accordance with the requirements