

"An Analysis of Stream Pollution Legislation." Oregon State Planning Board. Salem, OR, August 1936. (Reviewed by Alletta Brenner)

This report examines pollution legislation of Oregon, as it existed during the 1930s, well before the advent of the federal Clean Water Act. By giving detailed descriptions of the various codes and governmental structures in place, it aimed to explain why the system was not working to sufficiently protect waterways, and then to provide possibilities for new legislation based on an analysis of both federal jurisdiction, and other states' laws. This analysis is broken down into the following areas:

- Common Law Rights and Liabilities of Riparian Owners (including municipalities, industries, and individuals)
- Penal Statutes (their structure, operation, and effectiveness)
- United States Statutes and Treaties (issues of jurisdiction, and the possibility of federal clean water legislation)
- Compacts and Controversies between States
- Oregon Statutes (Public Health, Fish and Game Code, plus Special Statutes and Nuisance Statutes, and past decisions in Oregon courts)
- Comparative Legislation (in other states)

Overall, the report concluded that the clean water laws for the prevention and remediation of pollution were severely insufficient. The reasons for this were multiple. First, the majority of the laws at the time were in the form of “unrelated and uncoordinated nuisance and penal statutes,” which, due to their vague and uncoordinated nature, were virtually impossible to enforce. Second, because the state had failed to create a wide-reaching and comprehensive set of laws concerning pollution, and since there were no federal statutes able to deal with the problem, there was a simple lack of legislation concerning pollution problems. Finally, even with the existing laws, there was a total lack of “proper delegation of powers to administrative agency,” resulting in a mess of cross-purposes between state agencies and a lack of a directed effort to deal with the problem.

In conclusion, the report states that the only solution in the creation of a comprehensive and enforceable set of laws, concurrent with a concerted public effort to purify the state's waterways. In this, compulsory action will be necessary, but only possible with an “insistent demand of public opinion that the waters of the state be so cleansed.”

Critique

This source looks at the issue of the historical pollution of the state's waters from the perspective of the legal battles fought over it. Thus, while it does not give specific insight into the types and levels of pollution in the Willamette and its tributaries, it does provide an interesting look at the other side of the problem, from the regulatory standpoint.

One thing I found interesting in this report was that, contrary to what one might think, there were numerous statutes in place at this time demanding the purity of rivers and streams. Dealing with issues from the preservation of water at a quality suitable for irrigation, to the preservation of fish and other aquatic life, the laws stated quite unequivocally that pollution was a detriment and needed to be controlled in order to protect the public good.

The problem came from the fact that judges and bureaucrats, invoking the same public good, chose to ignore or circumvent them, valuing the right to pollute instead. A significant portion of this failing resulted from bureaucratic "red tape" and lack of coordination. Underscoring all of this was a deficiency of public interest on the issue. This struck me as quite interesting, as many would argue that despite the vast increase in legislation both federal and local, these same problems plague us today.

In short, this report would be useful to anyone interested in the history of pollution legislation, and the problems that befell lawmakers and activists who wished to improve water quality. One area of particular use would be the appendix, which includes listings of laws and court rulings concerning water quality both in Oregon and around the nation. For a closer look at the pollution issues of this period, some of these court cases may be helpful sources.

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