

WATER POLLUTION CONTROL REFORM IN IOWA: THE DEPARTMENT OF ENVIRONMENTAL QUALITY ACT OF 1972

For over fifty years the State of Iowa has actively sought workable solutions to the problem of water pollution control. The latest and most extensive effort came in 1972, when the Iowa General Assembly repealed state water pollution control provisions enacted in 1965¹ and then substantially re-enacted the provisions as part of a completely reorganized scheme of administration and enforcement.² Although the operative water pollution control provisions of the 1965 Act and the 1972 Act are practically identical,³ important changes have been effected in the administration of those provisions by the 1972 Act's extensive structural reorganization of the control program.⁴ The result is a plan that both retains the Iowa tradition of informal enforcement proceedings and seeks to eliminate previous administrative obstacles to the effectiveness of the overall program. By recognizing the deficiencies in water pollution control administration that the 1965 Act intended to remedy, valuable insight into the purposes of the 1972 reorganization can be obtained.

Water pollution control in Iowa, as in most states, has experienced three evolutionary stages,⁵ passing from purely local, and consequently limited, measures to regulation by a central state agency not solely concerned with water pollution control, and finally to regulation by a centralized public control agency exclusively concerned with water pollution problems.⁶ At the second stage, Iowa in 1923 en-

1. Ch. 375, [1965] Iowa Acts 61st G.A. 540 (repealed 1972).

2. Ch. 1119, [1972] Iowa Acts 64th G.A. 401, *re-enacting* IOWA CODE § 455B (Supp. 1973).

3. Letter from Joseph E. Obr, Director, Iowa Department of Environmental Quality, to the *Urban Law Annual*, Oct. 29, 1973, on file with the *Urban Law Annual* [hereinafter cited as Letter from the Director]. Compare IOWA CODE §§ 455B.30-48 (Supp. 1973), with ch. 375, §§ 9-28, [1965] Iowa Acts 61st G.A. 540 (repealed 1972).

4. See IOWA CODE §§ 455B.1-.9, .30-49 (Supp. 1973).

5. Hines, *Nor Any Drop To Drink: Public Regulation of Water Quality*, 52 IOWA L. REV. 186, 202 (1966) [hereinafter cited as Hines].

6. *Id.*

trusted primary responsibility for pollution control to the State Health Department.⁷ The power to enforce pollution abatement was considered tough and progressive in its time⁸ and was significantly augmented in 1949,⁹ allowing the Health Department to maintain the relative effectiveness that characterized most of its forty-two years of primacy in administering the control program.¹⁰ By the early sixties, however, public discontent with Health Department administration of the control program, primarily because of the leisurely pace of enforcement,¹¹ prompted the Governor to appoint a special subcommittee to study the water pollution control situation in Iowa.¹² One sentence of the subcommittee's final report summarized its findings: "We have no state body or authority existing at the present time that has the knowledge, background and experience, the resources in men or money, or the authority to adequately provide a water pollution control program."¹³

The subcommittee recommended creation of a commission that would be given complete jurisdiction over water pollution control¹⁴ and drafted legislation that was enacted in 1965.¹⁵ The Iowa Water Pollution Control Commission (IWPPCC), established by the 1965 Act, was, however, primarily a policy-making body, without personnel of its own and dependent upon the Health Department to carry out its decisions.¹⁶ In addition, the IWPPCC was provided

7. Ch. 37, § 1, [1923] Iowa Acts 40th G.A. 33 (repealed 1965).

8. Hines & Schantz, *Improving Water Quality Regulation in Iowa*, 57 IOWA L. REV. 231, 241 (1971) [hereinafter cited as Hines & Schantz].

9. Ch. 79, [1949] Iowa Acts 53d G.A. 108, amending IOWA CODE § 135 (1946).

10. Hines & Schantz 245.

11. Hines 208-09. The conciliatory approach of Health Department officials was based on an interpretation of the 1923 law that extended the times for compliance with the first orders issued pursuant to that law. Hines & Schantz 242.

12. Hines & Schantz 245.

13. *Id.*, citing GOVERNOR'S WATER POLLUTION STUDY SUBCOMMITTEE, FINAL REPORT 10 (1964).

14. Hines & Schantz 245.

15. Hines 209-11.

16. Hines & Schantz 246. The Act provided: "The commission *through the state department of health* shall have general supervision over administration and enforcement of all laws relating to the pollution of any waters of the state, *except as provided in section [135.11] of the Code.*" Ch. 375, § 9, [1965] Iowa Acts 61st G.A. 540 (repealed 1972) (emphasis added).

Section 135.11 provided for performance by the Health Department of some of the same functions purportedly entrusted to the IWPPCC by the 1965 Act. *Com-*

no means to ensure Health Department compliance with its directives.¹⁷ The Health Department's undermanned field service and investigative arm was unable or unwilling to undertake tasks set for it by the IWPCG.¹⁸ As a result, the IWPCG relied heavily on the State Hygienic Laboratory at the University of Iowa for much of its investigatory work.¹⁹ Health Department resentment at the interjection of the IWPCG into the pollution control program and the IWPCG's increasing reliance on outside assistance caused inter-agency conflict.²⁰ Eventually, the cumbersome scheme of shared authority and the lack of Health Department accountability to the IWPCG generated friction sufficient on occasion to bring the pollution control program to a standstill.²¹

The 1972 Act represents a sweeping administrative reorganization of the control program.²² It creates a separate parent agency, the Department of Environmental Quality (DEQ), to administer the State's combined pollution control programs in the problem areas of air quality, chemical technology, solid waste disposal, and water pollution control.²³ Under the 1972 Act each problem area is assigned to a separate commission having exclusive policy-making power within its assigned sphere.²⁴ The function of the DEQ is to coordinate the programs of the commissions through the DEQ's Executive Commit-

pare IOWA CODE § 135.11 (1972) with IOWA CODE § 455B.17(3) (1971). Section 135.11 was amended by the 1972 Act to eliminate this overlap. See ch. 1119, § 112, [1972] Iowa Acts 64th G.A. 401, amending IOWA CODE § 135.11 (1972).

17. The Act provided that "the department of health in accordance with the direction and policies of the [IWPCG] may" issue orders. Ch. 375, § 11, [1965] Iowa Acts 61st G.A. 540 (repealed 1972) (emphasis added). The IWPCG was not granted authority to order an investigation on its own motion. *Id.* § 9(3).

18. In the 1930's the Health Department had eighteen professional engineers; in 1968 it had three. In terms of professional man-years expended per capita of population, Iowa ranked 50th among the states in 1970. Hines & Schantz 262.

19. *Id.* at 303-04.

20. The Chairman of the IWPCG at one point described the situation as "intolerable." *Id.* at 248. Although likely to produce friction, the 1965 Act was a compromise drafted so as to avert all-out opposition from the Health Department, which was loath to lose administration of its program. *Id.* at 252.

21. *Id.*

22. IOWA CODE § 455B (Supp. 1973).

23. *Id.* §§ 455B.2, -.4.

24. *Id.* § 455B.5(2).

tee²⁵ and to administer the programs in compliance with the rules and regulations adopted by the Executive Committee and the commissions.²⁶ The most important impact of the 1972 Act upon Iowa's water pollution control program is the shift of policy-making and administrative responsibilities from the Health Department to an independent agency entrusted with developing a comprehensive pollution control program for the state.²⁷

The reorganization also includes the newly-created Water Quality Commission (WQC). As compared to its predecessor, the IWPC, the size of the WQC was reduced by confining most *ex officio* membership of outside agency heads to the Executive Committee.²⁸ The only *ex officio* member of the WQC is the Chairman of the Iowa Development Commission, whose input helps to coordinate the WQC's policies with the Iowa developmental policies.²⁹

Although special interest representation on the WQC has been retained,³⁰ such representation has been pared to a more even balance with representatives of the public at large.³¹ Special interest representation is a common feature of state programs,³² and there is evi-

25. *Id.* § 455B.7(3). The composition of the Executive Committee attests to its coordinating function. Included as nonvoting members are the heads of various state agencies more or less concerned with pollution control, as well as both the Director of the Bacteriological Laboratory at Iowa State University and the State Geologist. *Id.* § 455B.6. Such diverse membership is valuable because pollution problems are not always neatly classified into subject areas.

26. *Id.* § 455B.3.

27. Letter from the Director; *see* IOWA CODE § 455B.3(5), (7) (Supp. 1973).

28. The IWPC included as voting members the Commissioner of Public Health, the Director of the State Conservation Commission, the Director of the Iowa Resources Council, a staff member of the state university having technical knowledge in the field of water pollution, the Secretary of Agriculture, the Director of Soil Conservation, and five state electors, one representing industry, one municipal government, one owner-operator farmers, and two the public at large. *See* ch. 375, § 4, [1965] Iowa Acts 61st G.A. 540, *as amended*, ch. 262, § 1, [1969] Iowa Acts 63d G.A. 351 (repealed 1973).

29. IOWA CODE § 455B.4(2) (Supp. 1973). The Iowa Development Commission fosters the growth of Iowa industry. IOWA CODE § 28 (1971).

30. IOWA CODE § 455B.4(2) (Supp. 1973) (such representation includes diversified farming and privately owned manufacturing).

31. *Id.* (two of the five members are electors representing the public).

32. *See* Stein, *Problems and Programs in Water Pollution*, 2 NATURAL RESOURCES J. 388, 406 (1962).

Great diversity exists among the states with respect to interest representation. *See, e.g.,* CAL. WATER CODE §§ 13201 (a) (1)-(7) (Deering Supp. 1973) (members

dence that the more potential polluters are involved with control programs, the greater is their willingness to cooperate.³³ This view is shared by DEQ personnel, who regard the WQC as "one of the most effective, well-informed, unbiased Commissions in the United States."³⁴

As part of the attempt to improve coordination between policy formulation and administration, the 1972 Act provides that the Executive Director of the DEQ shall attend WQC meetings³⁵ and may recommend the adoption of rules and regulations to implement the programs and services assigned to the WQC. Since the WQC is composed of laymen,³⁶ the Executive Director provides a valuable professional input.³⁷ Apart from the obvious disadvantages of a part-time lay commission devoting only limited time to detailed review of the program, DEQ personnel feel that such a commission is peculiarly "able to retain [its] objectivity and overall view of water quality problems . . . without getting bogged down in insignificant detail which should be handled by professional staff."³⁸ Moreover, continuity of administration and enforcement seems more likely under the Executive Director than under the Health Department, given the new independence of the DEQ and its staff.

A potential threat to the DEQ's independence stems from the failure

represent water supply, conservation, irrigated agriculture, industrial water use, municipal government, county government, and non-governmental recreation organizations; three members are not associated with any of the foregoing, two of whom shall have special competence in water quality related areas); ILL. ANN. STAT. ch. 111½, §1005(a) (Smith-Hurd Supp. 1973) (five technically qualified members); N.Y. ENVIRONMENTAL CONSERVATION LAW § 5-0101 (McKinney 1973) (all to be qualified to analyze matters of environmental concern, one each to represent conservationists and industry, and four to represent public health, natural sciences, urban studies, or other environment related disciplines); N.D. CENT. CODE § 61-02-04 (Supp. 1973) (only qualification is that members be electors).

33. Hines 219.

34. Letter from the Director.

35. IOWA CODE § 455B.4 (Supp. 1973).

36. Commission members are paid on a per diem basis and are not required to have any training in the area of pollution control. *Id.* §§ 455B.4(2), (4). Compare Iowa with Illinois where the Illinois Pollution Control Board members are paid \$30,000 annually and must be "technically qualified." ILL. ANN. STAT. 111½, § 1005(a) (Smith-Hurd Supp. 1973).

37. The Director is selected on the basis of his administrative abilities. IOWA CODE § 455B.2 (Supp. 1973).

38. Letter from the Director.

of the 1972 Act to make the Executive Director ultimately accountable to the policy-making commissions and the Executive Committee. Because he is appointed by the Governor and serves "at his pleasure,"³⁹ there has been some concern that the Executive Director may become the focal point of a "politically explosive" power struggle such as that experienced under the Health Department. The Executive Director may be forced to choose between obedience to the Executive Committee or dismissal by the Governor.⁴⁰ Although confrontation is conceivable, it is unlikely precisely because interference by the Governor with lawful Committee directives would be politically explosive. In addition, direct interference by the Governor would probably be unnecessary because he appoints the commissioners who select the Executive Committee.⁴¹ Given the Governor's extensive control over the composition of both the policy-making and administrative sectors of the DEQ, the true danger, if any, is not that of confrontation, but of partisan influence over the control program as a whole.⁴²

Another structural modification, however, provides a contrapuntal balance to any threat of political influence. The legislature gave express recognition to the vital role of the State Hygienic Laboratory by amending the statute to include among the Laboratory's duties "environmental quality services which, by contract, are requested by the department of environmental quality."⁴³ Although this denies the DEQ an in-house scientific and technical establishment, the independence of the Laboratory gives it potential for a watchdog role within the overall program.⁴⁴ In addition, the Laboratory's excellence constitutes a positive asset to the quality of the program.⁴⁵

39. IOWA CODE § 455B.2 (Supp. 1973).

40. Hines & Schantz 258-59.

41. IOWA CODE §§ 455B.4-.6 (Supp. 1973). Compare *id.* with MICH. STAT. ANN. § 3.521(1) (1969) (Governor appoints three; four are *ex officio*) and N.D. CENT. CODE § 61-02-04 (Supp. 1973) (Governor appoints five members and is himself a member).

42. The decision to make the Executive Director accountable to the Governor rather than to the Executive Committee also "involves a judgment of the political practicalities of the situation." *Cf.* Hines 219. The Governor does not act in a vacuum. The legislative judgment favored having the Executive Director ultimately accountable to a highly visible elected official rather than to tenured appointees.

43. Ch. 1119, § 10, [1972] Iowa Acts 64th G.A. 401, amending IOWA CODE § 263.8 (1972).

44. Hines & Schantz 259.

45. Letter from the Director.

In contrast to the marked structural reorganization of the Iowa pollution control program accomplished by the 1972 Act, the enforcement provisions, which form the heart of that program, have been carried over from the 1965 Act almost unchanged.⁴⁶ The powers granted to the WQC and the Executive Director are comparable to those of other modern state water pollution control laws.⁴⁷ The WQC can issue subpoenas to violators,⁴⁸ engage in informal negotiations,⁴⁹ conduct public hearings,⁵⁰ grant a reasonable time for compliance with orders,⁵¹ and initiate legal proceedings for the enforcement of orders.⁵² The Executive Director conducts investigations ordered by the WQC⁵³ and issues routine orders for prevention or abatement

46. *Id.* Compare ch. 375, §§ 9-28, [1965] Iowa Acts 61st G.A. 540 (repealed 1972), with IOWA CODE §§ 455B.30-48 (Supp. 1973).

47. Compare IOWA CODE § 455B.32(1) (Supp. 1973) (authority to develop comprehensive plans and programs) with OHIO REV. CODE ANN. §§ 6111.13, -.41 (Page Supp. 1973) and TENN. CODE ANN. § 70-328(a) (Supp. 1973).

Compare IOWA CODE § 455B.32(2) (Supp. 1973) (authority to set water quality standards) with ALASKA STAT. §§ 46.03.070, -.080 (1971) and TENN. CODE ANN. § 70-328(a) (Supp. 1973).

Compare IOWA CODE § 455B.32(3) (Supp. 1973) (authority to establish rules and regulations governing its programs) with DEL. CODE ANN. tit. 7, § 6011 (1970).

Compare IOWA CODE § 455B.37(3) (Supp. 1973) (authority to order change in method of waste discharge) with ARK. STAT. ANN. § 82-1904(6) (Supp. 1973) and R.I. GEN. LAWS ANN. § 46-12-8 (1971) and WIS. STAT. ANN. §§ 144.025(2) (d)(1), (2)(d)(2)(r) (Supp. 1973).

Compare IOWA CODE § 455B.46 (Supp. 1973) (authority to require submission of plans for waste disposal systems) with ARK. STAT. ANN. § 82-1904(7) (Supp. 1973) and TENN. CODE ANN. § 70-329(k) (Supp. 1973).

Compare IOWA CODE § 455B.43 (Supp. 1973) (authority to direct attorney general to bring action for injunction) with TENN. CODE ANN. § 70-339 (Supp. 1973).

48. IOWA CODE § 455B.37 (Supp. 1973).

49. *Id.* § 455B.34.

50. *Id.* § 455B.32(7). The Commission may authorize the Executive Director to conduct such hearings. This power of delegation would ensure continuity and efficiency of enforcement that might otherwise be lacking with a part-time Commission.

51. *Id.* § 455B.37(4); cf. GA. CODE ANN. § 17-511(4) (Supp. 1973); IND. ANN. STAT. § 68-525 (1961); WIS. STAT. ANN. § 144.025 (2)(d)(1) (Supp. 1973).

52. IOWA CODE § 455B.38 (Supp. 1973); cf. IND. ANN. STAT. § 68-527 (1961).

53. IOWA CODE § 455B.33(1) (Supp. 1973). The WQC's power to order investigations on its own motion lends new flexibility to the plan. Under the 1965 Act the WQC had first to receive a request from outside agencies or citizens to institute an investigation. The Executive Director may also conduct investigations upon the written request of any state agency, political subdivision, local board of health, or 25 state residents. *Id.*

of pollution according to rules and regulations established by the WQC.⁵⁴

Failure to obey any order constitutes prima facie evidence of contempt,⁵⁵ but it is only after notice, a hearing, and a court order that continued noncompliance subjects the offender to the penalties provided in the Act.⁵⁶ The inefficiency of this procedure for compelling compliance, which entails full litigation of the reasonableness and validity of the order,⁵⁷ constitutes the major weakness of the enforcement plan. This weakness, however, is mitigated by the fact that failure to appeal an order within thirty days renders the order conclusive.⁵⁸ Theoretically, the same inefficiency hampers enforcement when the violators make a timely appeal because no special probative weight is given to the Commission's findings that led to issuance of the order.⁵⁹ In practice, however, hearings before the WQC resulting in the issuance of formal orders are seldom held, and consequently, there are few formal orders either to be enforced through contempt proceedings or to be appealed.⁶⁰

A singular feature of the Iowa law is the requirement that the

54. *Id.* § 455B.33(3). In other states this duty is assigned to the water quality control boards. *See, e.g.*, ARK. STAT. ANN. § 82-1904(6) (Supp. 1973); IND. ANN. STAT. § 68-525 (1961); TENN. CODE ANN. §§ 70-328, -329 (Supp. 1973). The WQC may also issue emergency orders. IOWA CODE § 455B.37(2) (Supp. 1973).

55. IOWA CODE § 455B.44 (Supp. 1973).

56. *Id.* It should be observed, however, that the new Act increases the fine to a maximum of \$500 for each day of noncompliance. This compares to \$100 for each offense under the 1965 Act. Ch. 375, § 24, [1965] Iowa Acts 61st G.A. 540 (repealed 1972). The increased fine has only been applied once, and the effect of the increase is as yet difficult to assess. Nevertheless, the higher fines are felt to have given the Department a badly needed enforcement tool. Letter from the Director.

Other states have also made each day of noncompliance a separate offense. *See, e.g.*, DEL. CODE ANN. tit. 7, § 6013(c) (Supp. 1970); N.H. REV. STAT. ANN. § 149:19 (1964); TENN. CODE ANN. § 70-337(a) (Supp. 1973).

57. At the hearing the sole issue is whether the order was lawful and reasonable, and if so, the court shall order compliance. *See* IOWA CODE § 455B.44 (Supp. 1973). *See also* MINN. STAT. ANN. § 115.05(9) (1964) (order considered prima facie reasonable and valid); N.H. REV. STAT. ANN. § 149:14 (1964) (order given effect of lower court judgment).

58. IOWA CODE § 455B.42 (Supp. 1973).

59. The hearing on appeal is treated as a suit in equity and is heard de novo. *Id.* § 455B.39.

60. Of the 120 cases included in one study, in only two did negotiations fail to result in a consent order. Hines & Schantz 322.

WQC engage in informal negotiations as the first step in the enforcement process. These negotiations usually culminate in the entry of consent orders and must precede the entry of formal orders.⁶¹ The informal approach presents several difficulties, however, because the 1972 Act makes no mention of consent orders. The failure to describe the legal effects and enforcement procedures for consent orders may yield untoward results because the only procedures for enforcement in the Act are those applicable to formal orders. The violator, after conceding that a condition in need of correction exists and agreeing to correct that condition, may fail to comply because no penalty can be imposed for noncompliance until after a hearing, a court order for compliance, and continued noncompliance. The violator may succeed in postponing pollution control modifications by using the informal consent procedure as a delaying tactic⁶² and, under a literal reading of the Act, force the DEQ to litigate the validity and reasonableness of all issues disposed of by the order to which the violator voluntarily consented.⁶³ In addition, although the Act does not specifically provide for appeal of a consent order, the violator obtains the equivalent of an appeal by forcing the DEQ to initiate contempt proceedings.

The fundamental impediment to an effective informal consent procedure is the lack of any means, such as a performance bond or the power to levy fines, by which the WQC can prevent abuse of the procedure and ensure good faith compliance.⁶⁴ In some cases, this

61. IOWA CODE § 455B.34 (Supp. 1973). The DEQ's preference for persuasion is common to most state agencies; other agencies achieve similar results through administrative discretion. See Stein, *supra* note 32, at 406.

62. Moreover, by the time the case could be decided, the court would probably have to extend the timetable set out in the consent order. See *Iowa Water Pollution Control Comm'n v. Town of Paton*, 207 N.W.2d 755, 759, 765 (Iowa 1973).

63. The Act provides no criteria for determining the reasonableness of a consent order or of any other order. Conceivably, the violator might interpose financial hardship, inadequate time to comply because of difficulty in obtaining bids, contractors, architects, designs or materials, or even delay by the DEQ itself in approving plans. *Id.* at 762-65.

64. Compare this with the provisions of the recent Illinois Act, which empowers the Illinois Pollution Control Board to levy fines against violators and to require the posting of a security bond to ensure correction of the condition in return for a temporary variance. ILL. ANN. STAT. ch. 14, §§ 1035-38, 1042 (Smith-Hurd Supp. 1973). For a discussion of the Illinois Act see 1973 URBAN L. ANN. 353.

The Pennsylvania Pollution Control Board can impose a penalty of up to \$10,000, plus \$500 for each day of continued violation without resort to judicial process. PA. HEALTH & SAFETY CODE § 691.605 (Purdon Supp. 1973).

deficiency frustrates the legislative intent underlying provision for informal settlement of pollution problems—to avoid unnecessary litigation and to continue the tradition of reasonableness and conciliation in enforcement proceedings.

A recent case has resolved several questions left unanswered by the 1972 Act as to the effects of a consent order. In *Iowa Pollution Control Commission v. Town of Paton*⁶⁵ the Supreme Court of Iowa affirmed the WQC's authority to enter into consent orders with violators⁶⁶ and held that "the validity and reasonableness of a colorable commission order are conclusively established by failure to appeal as to circumstances then existing and reasonably foreseeable."⁶⁷ The court narrowed the issues that may be raised in a contempt proceeding seeking compliance with a consent order to those issues affecting the reasonableness or validity of a consent order raised by "subsequent events not reasonably foreseeable at the time the unappealed order

65. 207 N.W.2d 755 (Iowa 1973). The action was brought under the 1965 Act and decided after the 1972 Act came into effect. For convenience, the court referred to the sections of the 1965 Act because the provisions involved in the case were "nearly identical" to those of the present Act. *Id.* at 757.

The facts of the case were as follows: Defendant, Town of Paton, population 340, entered into a consent order in 1968 with the IWPCG to modify its sewage system after pollution was discovered at points of discharge. Defendant undertook initial steps to comply but was unable to meet the original schedule because of engineering problems and failure of its financing plan. Defendant ceased efforts to comply and failed to file progress reports with the IWPCG, which therefore brought a contempt proceeding to compel compliance with the consent order. The trial court ordered compliance and set a new schedule. Defendant appealed, asserting, *inter alia*, that financial hardship imposed by the modifications rendered the order unreasonable in view of defendant's small population. On appeal, the Supreme Court of Iowa affirmed the trial court's holding and ordered compliance according to a new schedule. *Id.* at 755.

66. The Act does not expressly provide for the entry of consent orders by the Department. The court, reasoning from both the statutory directive for the holding of informal negotiations and the implied grant of authority to enter into agreements to resolve the problem, held that the IWPCG had authority to enter consent orders to enforce those agreements. The court concluded that such orders, entered after admission of culpability, waiver of hearing, and negotiated agreement, were entered on the same premise as consent judgments entered by a court. *Id.* at 760.

67. *Id.* at 763. Reasoning *in pari materia*, the court concluded that to allow the reasonableness and validity of a consent order to be litigated would defeat the legislative purpose of providing for informal resolution of pollution problems. The court held that IOWA CODE § 455B.21 (1966) (now IOWA CODE § 455B.42 (Supp. 1973)), which precludes review as to reasonableness and validity of an unappealed order, applies to consent orders.

was entered."⁶⁸ The court also construed the Act as not allowing financial hardship to bear upon the reasonableness or validity of *ordered improvements*, and limited the consideration of unforeseeable financial hardship to the question of the reasonableness of the *terms* of the ordered improvements.⁶⁹ Finally, the court vigorously rejected the argument that the action was premature, suggesting that the DEQ can act as soon as a party to a consent order indicates an intent not to comply, rather than awaiting the expiration of the order.⁷⁰

For the past fifty years Iowa has demonstrated an active commitment to the goal of water pollution control by successive enactments of progressive legislation. By establishing the Department of Environmental Quality in 1972, thereby completely reorganizing its water pollution program for the second time in eight years, Iowa has responded to the pressing problem of water pollution and shown itself willing to seek effective solutions. At the same time, Iowa has preserved a tradition of informal proceedings within its new program, evincing a continued concern that the party attempting to comply in good faith with the state's efforts to clear its waters should be treated reasonably and fairly.⁷¹ Although the program has flaws and contains unwieldy procedural safeguards for alleged polluters, the Supreme Court of Iowa has given strong indication that it is sympathetic to proper enforcement. The result is a plan that, while uniquely suited to Iowa, offers improved solutions to the omnipresent problem of water pollution control.

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68. 207 N.W.2d at 763.

69. "Such evidence does not bear on whether the pollution must be abated, but it does affect how and when abatement is to be accomplished." *Id.*

70. On appeal, defendant argued that the action was prematurely brought, alleging that the delay in compliance was due to factors beyond its control. The court rejected this contention stating:

Its argument [that] this action is premature is palpably unconvincing. The commission had sufficient reason to initiate this action; the town's position since then supports the commission's concern about the necessity of reinforcing its order by obtaining a court order requiring compliance.

. . . The town was content to let matters slide until the commission awakened to the fact [that] the consent order was not being followed.
Id. at 765.

71. The court in *Paton* placed great weight on the Act's repeated reference to the reasonableness standard. *Id.* at 763. This standard has long been a keynote of program administration in Iowa.

