

Environmental Pollution Control in Japan —Development and Characteristics—

TSUMORU USHIYAMA

I. INTRODUCTION

For studies of the development of environmental pollution control in Japan, it is necessary to review, not only the changes of the State level legislation, administration and judicature, but also the changes and functions of local autonomy level ordinances and administrative guidance as well as the roles of local resident movements which have been a factor causing both kinds of the changes.

This report will discuss the roles played by local autonomies and local resident movements in forming laws for environmental pollution control. Its conclusions may be summarized by two propositions:

(1) As local autonomies are in a position to unavoidably react directly to the demands of local residents who are suffering from environmental pollutions, they tend to adopt pollution controls in advance to the State legislations for environmental pollution control, by their own ordinances and administrative guidance; and even if such controls exist both under the legislation of the State and the ordinance and administrative guidance of local autonomies, local autonomies tend to adopt narrower control than the State

by their ordinance and administrative guidance and the State's control would follow them. (2) Resident movements have been a factor causing the changes of the State level legislation, administration and judicature, and those of local autonomy level ordinances and administrative guidance.

In capitalistic Japan, environmental pollution may be considered as a product generated by big business, in tie with administration, by neglecting investment for the prevention of environmental pollution, and by disrupting man and environment. The purpose of this report is to clarify that local resident movements and local autonomies have significant roles to play in countering such disruption of man and environment, and in protecting the people's rights to their life and health as well as to healthy environment.

II. ENVIRONMENTAL POLLUTION CONTROL BY LOCAL AUTONOMIES AND BY THE STATE

The first environmental control step in Japan after World War II was the environmental control ordinance of Tokyo Prefecture (1949), which was followed by those of several other prefectures. When the State enacted the Smoke and Soot Regulation Law (1962) to control air pollution, six prefectures had already enacted their own ordinances against environmental pollution, and when the State enacted the Basic Law for Environmental Pollution Control (1967), 19 prefectures had their pollution control ordinances. (Japan has 47 prefectures.)

These facts show that, since disadvantageous effects of environmental pollution primarily affect local residents, the pollution would first cause them to develop resident movements protesting against environmental disruption, then the movement would change the policy of the local autonomy concerned, and all these moves would force the State (central government) to change its policy. This process can be proved by the contents of such controls.

Taking sulphur oxides (SOx) for example from among other air

pollutants, it was in the "Law for the Amendment to the part of the Air Pollution Control Law"(1974) that the method of the regulation of total emission was first adopted at the State level. As early as in 1970, Tokyo Prefecture enforced such regulation of total emission, controlling emission by the total sulphur oxide emission of individual factory. In an effort to satisfy the environmental quality standard (at that time the environmental quality standard enacted in 1969), the Tokyo Prefectural government had set up a program to abate sulphur dioxide emission in Tokyo from a total of approximately 150,000 tons/year recorded in Fiscal 1970 to the 1964 level of 81,000 tons/year which was below the environmental quality standard. The fuel regulation per factory was enforced as part of this program.

Mie Prefecture, having Yokkaichi in it as one of the representative air-polluted zone in Japan, enforced in Yokkaichi area the regulation of total emission of sulphur dioxide from 1972 by its new ordinance. Then the decision of Yokkaichi environmental pollution case was given in July 1972. It ruled that the firms involved in the industrial complex at Yokkaichi, the air pollution source, were liable for damage. In this connection the decision also pointed out that the State and local autonomy policies to invite the firms were defective. Immediately after the ruling, the Mie Prefectural government narrowed the standard for the regulation of total sulphur dioxide emission by its administrative guidance, and moreover, it revised its environmental pollution control ordinance to strengthen this regulation of total emission. These facts about the case of the regulation of total sulphur oxide emission may typically illustrate relations between the control by local autonomies and that by the central government.

It is also seen in the causes declared in pollution control legislations how local autonomies are more positive than the central government in their stance against environmental disruption. In 1969, after Ryokichi Minobe supported by the democratic progressive forces won governorship, Tokyo Prefecture enacted a new environmental pollution control ordinance, which set forth in its preamble the following three principles:

Principle I: Every resident of the prefecture shall have the right to enjoy healthy, safe and agreeable life and this right shall not unduly be infringed by environmental pollution.

Principle II: Every resident of the prefecture is required to pay respect to the right of other people to enjoy healthy, safe and agreeable life, and shall not do any disruptive act against natural and living environment causing such environmental pollution that infringes on the said right.

Principle III: Tokyo Prefecture, which is a self-governing body of the residents of Tokyo Prefecture, shall be responsible to the maximum possible extent for guaranteeing the right of the residents to enjoy healthy, safe and agreeable life, and shall fulfil this responsibility by controlling and eliminating environmental pollution by all means.

This ordinance shall be interpreted and adapted in such a manner that the purpose stated in the above-mentioned principles may be accomplished.

Another local autonomy ordinance that stipulates the guarantee of a human right to healthy environment is the environmental pollution control ordinance of Kyoto Prefecture (1971). It is a proved fact that progressive environmental pollution controls have been implemented under all those pollution control ordinances which provide for highly valuable principles. The State has a future task that its laws should stipulate the guarantee of a right to healthy environment.

III. ROLES OF RESIDENT MOVEMENTS

1. Legislation, Administration and Judicature of the State, and Resident Movements

Resident movements have been the greatest factor that caused the development of the State's legislation, administration and judicature. The first State level laws for environmental pollution control were a set of two laws for water quality control (the Public Waters Water Quality Conservation Law, and the Factory Effluents Control Law, 1958), the enactment of which resulted from an inci-

dent that the mass of angry fishermen entered forcefully into the premises of a paper plant on the bank of the River Edogawa pouring into Tokyo Bay, as they raged at the negligence of the plant and administration in taking effective preventive steps against damage to fish and shellfish by dirty plant effluents. The State considered that, without some control measure against the pollution, the very existence of the industry would be endangered by the vehement resistance of fishermen.

Control of air pollution by the State started with the Smoke and Soot Control Law (1962), as it was enacted because the massive occurrence of air pollution-related diseases at Yokkaichi city and Kawasaki city was becoming a social problem. The Basic Law for Environmental Pollution Control (1967) was enacted by the State as its basic statute governing measures against environmental pollution, when the central government feared that its policy to promote the development of large-scale industrial zones for factories might be hampered by the movements of local residents against environmental pollution. As mentioned above, massive occurrence of air pollution-related diseases had begun at Yokkaichi city, Kawasaki city and other large-scale industrial zones where operation had been started. Owing to these experiences, a drive to oppose the construction of an industrial complex was organized by the residents concerned (1963-1964) against a project of a industrial complex to be built in a zone covering Mishima, Numazu and Shimizu cities in Shizuoka Prefecture. The residents finally won the cancellation of the industrial complex project. This movement caused the enactment of the Basic Law for Environmental Pollution Control.

The decision of the Yokkaichi environmental pollution case as referred to above, ruled that, if plural factories are causing air pollution, each of these factories are responsible for the occurrence of air pollution-related diseases, and that they shall be liable for the damage. The decision not only constituted one of the reasons that caused the Air Pollution Control Law that adopted the method of regulation of total emission, but also promoted the enactment of the Pollution Health Damage Compensation Law (1973). Actually

keeping on inflicting damage on local residents, the companies concerned continued to deny their responsibilities for this, and this attitude of the companies naturally intensified the residents' movement against environmental pollution. The court opinions in the Yokkaichi case and other important decisions, concluding that the companies were responsible for the damage, induced to switch the policy of business circles and supporting central government, to the extent to allow a legislation that established a system of paying compensation to those whose diseases are recognized as the environmental pollution-related diseases, from a fund collected from the pollution source enterprises.

Administration is also influenced by resident movements. The environmental impact assessment system is a means generally recognized as effective for preventing environmental pollution and disruption. It was for the implementation of the Mishima Numazu industrial complex construction project, mentioned above, that a pollution impact survey was carried out for the first time in Japan, only about sulphur dioxide, and although later suffering from criticism that the survey was not correct scientifically. In other large-scale development projects after this, some environmental impact assessments were carried out. Most of these surveys were not required by the law, but they were conducted through administrative guidance because the consent of the residents concerned to the development projects would not be acquired without such surveys. Also resident movements and public opinions are indispensable factors to make a governor effectively execute his power for pollution control, authorized by State legislations.

Special attention is to be paid to the great role of trial in environmental pollution control. Since strong obstructive social influences are prevailing, the strongly organized movements of residents and the formation of supporting public opinions are necessary for successfully raising, maintaining and winning a litigation. In this connection, we shall review the case of Osaka International Airport environmental pollution, very significant case for pollution control.

Disadvantageous effects of noises generated by the landing and leaving aircraft at the Osaka International Airport is claimed to be

affecting 1.7 million people living in 11 cities around it. In this lawsuit, 272 residents requested that the Court tell the State to prohibit the landing and leaving of aircraft at the airport during a period from 9:00 p.m. to 7:00 a.m. in the next morning everyday. The decision of the Osaka High Court (1975) fully approved this request and ordered the State not to permit the use of the airport for landing and leaving of aircraft during this time zone. This decision holds a representing position in all the Japanese decisions concerning a request for court injunction and cleared the road for many other subsequent court actions for injunction, instituted one after another against public services.

Lawsuits of environmental pollution cases, supported by resident movements, have been leading to such judgements that contribute to the establishment of residents' right to healthy environment, and thus, they have been serving the formation of new laws through such judgements. In addition, to institute an action has an effect inducing defendants, including the central government, to take some steps for controlling environmental pollution in an effort to avoid their defeat.

2. The Measures of Local Autonomies against Environmental Pollution, and Resident Movements.

As mentioned before, local autonomies tend to take more progressive measures against environmental pollution than the central government, since the former is in a position to directly face the demands of those residents who suffer from environmental pollution and disruption. This fact may be further evidenced by a specific example.

The environmental pollution control ordinance of Tokyo Prefecture introduced an institution which allows residents to participate in administrative activities for the protection of the right of prefectural residents to healthy environment. This includes two key points. First, the governor is now required to investigate and monitor the source, causes, and conditions of generated environmental pollutions and some other matters, and to disclose to pre-

fectural residents the conditions of the pollution revealed by such investigation and monitoring. Secondly, an environmental pollution monitoring committee, participated by prefectural residents, has been established to investigate or deliberate the monitoring methods of environmental pollution sources, and the pollution control measures taken by the governor or other administrative agencies.

This residents' participation stipulated in the environmental pollution control ordinance of Tokyo Prefecture is understood to be a result from the agreement between the Tokyo Prefectural government and the residents around an incineration (refuse burning) plant site upon the installation of an incineration plant (1968). In order to guarantee certain compliance with the operation standards for the incineration plant under this agreement, both sides agreed upon the publication of data about the incineration plant, and establishment of a monitoring committee consisting of members equally appointed by the Tokyo Prefectural government and the residents. It was after the conclusion of this agreement, that the Tokyo Prefectural government signed a memorandum with a utility company whose power plant was going to be built in Tokyo, stipulating not only the appropriate standards for pollution controls but also the "principle of public disclosing" to be applied to all the matters concerning environmental pollution, and the establishment of a Tokyo Prefecture Pollution Control Committee, which was to be participated by experts and resident representatives and to serve for the promotion of anti-pollution measures (1968). Thus, the accomplishment of a resident movement was taken over by a local autonomy as one of the basic elements of its pollution control ordinance. It is also to be noted that all the four local autonomy ordinances which adopted the environmental impact assessment procedure were gains won by the movements of residents.

3. The Positions of Local Autonomies and Local Residents in the System of Environmental Pollution Control Statutes

The goal to be pursued after by the system of environmental

pollution control statutes in Japan today is to realize the guarantee of a right to healthy environment. This right can be grounded on the constitutionally established right to the pursuit of happiness (Article 13 of the Constitution of Japan), and also such right to live (Article 25, *ibid.*). There is a claim that the Japan's economic growth after World War II was partly due to its saving of those investments which were necessary for the control of environmental pollution. We deem it, however, the task of the Japanese people and the science of law to establish a principle that any business activities or industrial development should be permitted only so far as it does not infringe upon the right of the people to healthy environment.

For accomplishing this task, we can conclude from a historical review that the most effective means are the independent policy-making of local autonomies and independent local resident movements.

When local autonomies were going to enact some progressive ordinances, the central government very often intervened in the policy-making process of such local autonomies, and even once succeeded in deleting a certain kind of measure against environmental pollution from an environmental pollution control ordinance bill. It is a significant task to establish a statute system that guarantees the independence of local autonomies in their decision-making concerning anti-pollution measures. The other important task is to allocate positive roles to resident movements in such system of statutes. A major issue today is to give the form of a statute to the environmental impact assessment system guaranteeing the participation of local residents in the decision-making process of industrial development projects and other business projects. Although far from satisfactory in content, four local autonomies have enacted environmental impact assessment ordinances. However, it was in 1981 that a bill of a State level environmental impact assessment system, which had been examined by the central government for many years, was presented before the Diet. This delay was due to the opposition by business circles, by ministries preferring the promotion of industrial development

(such as the Transportation Ministry, the Ministry of International Trade and Industry, and the Construction Ministry), and by the dominant political party. The central government's plan of an environmental impact assessment system is so poor in content that we can hardly support it. Nevertheless the bill was not passed during the last session of the Diet. These facts suggest the degree of difficulty for the future successful guaranteeing of the right to healthy environment.