

## J. SCOTT CHRISTIANSON

### General Assembly caused decrease in clean air rights



The recent contempt case brought against Missouri Department of Natural Resources director David Shorr by the Associated Industries of Missouri is one of the most disturbing environmental issues state courts have addressed in some time.

The case is rooted in Missouri's clean air law, which contains a provision that state regulations on air pollution cannot exceed federal standards. Several years ago, the DNR issued regulations for the emissions of infectious waste incinerators under the clean air law. Even though these emissions contain heavy metals and harmful compounds generated by burning plastics, they had not previously been regulated by state or federal government.

The Associated Industries of Missouri successfully argued in court that since there were no federal regulations on emissions from infectious waste incinerators, any state regulation would be stricter than the federal standard.

The DNR countered by dropping its attempt to regulate the incinerators under the clean air law and issuing similar regulations under the solid waste law. AIM then filed contempt charges against Shorr, both personally and as DNR director, arguing that any attempt at regulating the emissions is illegal.

Unfortunately, the presiding judge sided with AIM and found Shorr in contempt. Shorr criticized the decision in a letter to the judge, saying the DNR is aware "that a public health threat exists, and yet ... we must wait until the federal government decides the fate of all Missourians regardless of the time delay."

Shorr wrote that it might be 1997 before federal regulations on infectious waste incinerators are in place.

"The philosophy to wait for federal action runs completely contrary to the constitutional premise and protection to which a citizen of this state is entitled," Shorr wrote.

Shorr told the judge that he will comply with the court order unless and until he wins an appeal of the decision. After the ruling, AIM representatives said their goal was not to avoid regulation but to object to the specifics of the regulations issued by the DNR. If that is true, why didn't AIM protest the specifics of the regulations in court rather than suing to avoid regulation altogether?

The root cause of this problem is the General Assembly, which passed a clean air law that contains the insidious wording that "relinquishes Missouri's right to set its own clean air standards."

State Rep. Chris Kelly, D-Columbia, said industry lobbied the General

Assembly for the wording for two reasons: a legitimate concern about the burden of complying with two very different sets of regulations and a desire to make as much money as possible regardless of environmental effects.

"There is some truth in both of those," said Kelly. "The problem is finding a balance. Sometimes the government goes overboard and regulates for regulation's sake, and other times the people who are being regulated don't want to comply with rational regulations.

"The fact is that this is the law, and that is what Shorr has to live with," Kelly said. "I don't like this law particularly — I think it is an infringement on state sovereignty. I don't think we should voluntarily infringe upon ourselves. If we want to regulate more than the feds, we ought to be allowed to go ahead and do it."

Ideally, legislators would provide a legal remedy that would allow Missouri to set its own clean air standards while addressing legitimate concerns of industry. But don't hold your breath. This past session, two bills were filed that would have barred all state agencies from issuing environmental regulations stricter than federal standards. Clearly, some Missouri lawmakers think the state should be run from Washington, D.C.

If you have a suggestion for a column, a gripe, a success story or whatever, write it down and send it to me, care of the Columbia Daily Tribune, PO Box 798, Columbia, Mo., 65205.