

## INTRODUCTION

During the first half of 1988, the Center for Urban Studies at Youngstown State University conducted a study to: (1) identify state business regulations which are particularly troublesome for firms in Ohio, and (2) recommend how to improve the state's regulatory climate. Results of the study were to be reviewed by the Ohio House Economic Development and Small Business Committee.

The first step of the study involved successive mailings of a questionnaire to businesses, business organizations, and legislative agents. The questionnaire (see Appendix A), purposely general and open-ended, represented the beginning of the data-gathering process rather than the sole means of collecting information. Extensive follow-up on the "most promising" issues raised by respondents was planned. The purpose was to conduct several in-depth case studies rather than to produce a comprehensive catalog of troublesome regulations.

The follow-up process began with a call to the original respondent to clarify responses to the questionnaire, to gather more detailed information, and to request other contacts who would represent both sides of the issue. Responses were consolidated into a single case study where appropriate. Four cases were ultimately selected for inclusion.

## RESULTS

### **The Response: A General Discussion**

Before discussing specific cases in detail, a general overview of the survey results is presented. Because the survey was designed only as a

point of departure, and experienced a low response rate (see Appendix B), this general discussion is not intended to reflect the whole of Ohio's business community.

Approximately 23 percent of the returned questionnaires stated that the recipient was not an appropriate target for the survey (retired, never owned a business, church, or non-profit organization, for example). Inappropriate targets probably constituted a substantially greater percentage of the overall sample, including non-respondents (see Appendix B).

Nearly 10 percent of the original respondents stated that they had no particular problem with any state regulation at the present time. Three of the four respondents who returned surveys after being telephoned stated that they had no regulatory problem. This suggests that, of the overall sample, a large fraction probably experienced no problem with any state regulation. In some cases, the respondents even recommended more regulation. One respondent stated that business regulation is actually the source of much of his business because the firm makes monitoring equipment necessitated by various regulations.

Of those respondents who did indicate that business regulation was a problem for them, nearly 30 percent mentioned workers' compensation. This issue was not pursued in the follow-up investigation because the purpose of the study is to examine the structure and process of regulation, not taxation. There are, already, interstate comparisons of Workmen's Compensation and Unemployment Insurance rates.

## Follow-up Findings

Follow-up interviews were conducted with seven of the original respondents as well as numerous other individuals related to the issues being considered. The follow-up process resulted in four case studies which are presented below. The descriptions of the cases have been prepared so that the anonymity of the respondents is preserved.

**CASE A:** A self-employed contractor complained about the administration of Section 123.151 of the Ohio Revised Code that encourages participation of minority-owned businesses on state government contracts. He felt that the Ohio Equal Employment Opportunity Commission is not helpful, that many minority firms are little more than "middlemen" for large contractors, that regulators do not check sites for compliance, and that some contractors meet minority set-aside requirements by stockpiling supplies not needed on the job.

A spokesperson for EEO stated that they try to be responsive but that the large volume of calls received, combined with responsibilities which require staff to be "in the field," sometimes makes this difficult. He agreed with the contractor concerning the problem of "middlemen" but stated that the agency is working to improve this situation. The spokesperson denied the charge that sites are not checked for compliance, adding that the EEO office has also been criticized for being over-zealous in this regard; he did admit that a priority was placed on checking large jobs (the contractor bid primarily on small jobs). The spokesperson related the "stockpiling" charge to the EEO's efforts to combat the "we have it in stock" excuse allegedly used by contractors to try and bypass set-aside requirements.

**CASE B:** The respondent is a contractor, complaining of the minority and women business enterprise bidding requirements on Ohio Department of Transportation projects that allow qualified minorities to win even though their bid is higher than other bidders. The respondent felt that too many sham companies qualified and that it was almost impossible to persuade ODOT that "a reasonable effort" had been made to find qualified minority-owned subcontractors and suppliers.

ODOT replied that regulations have been recently tightened up, and that some people complain about the difficulty of qualifying. The minority business head must own at least 51 percent of the business, be capable of managing its day-to-day operations, and be paid commensurate with the work and the responsibility. In response to the "reasonable effort" claim, the ODOT representative suggested that some contractors associated inconvenience with unreasonableness. The program is federal in origin although administered by the state.

A spokesperson for a related trade association confirmed that ODOT has tightened criteria to reduce the opportunity for sham companies, but agreed with the contractor concerning the difficulty involved in convincing ODOT of "reasonable effort."

**CASE C:** A developer complained that the Ohio Historic Preservation Office (OHPO) was a roadblock rather than a facilitator to development. The developer stated that the OHPO was often unable to respond to applications for historic preservation tax credit in time and failed to consider the economics of a project.

A representative of the National Trust for Historic Preservation explained that standards are federally determined (since the tax credit is also federal); OHPO's role is purely advisory. A spokesperson for OHPO stated that there is nothing in the federal standards that allows for any consideration of the economics of a project. The spokesperson believed that such consideration would jeopardize the historical integrity of projects.

**CASE D:** Several complaints were made about the procedures employed by Ohio Environmental Protection Agency (OEPA). An engineer stated that regulations are "open-ended" and that enforcement varies among different administrative districts. The respondent also believes that there is no adequate method for technically appealing OEPA's rulings--the Environmental Board of Review comes too late in the process, is too formal, and is not objective. A professional organization added that OEPA staff are young and inexperienced ("non-engineers review technical plans") and are not always aware of, or sensitive to, the practical decisions that must be made as part of a large engineering project.

Another developer complained of problems in the regulation of hazardous materials by OEPA that make it impossible to decide upon a site for hazardous wastes--no new sites have been developed since 1980. Everyone demands "Not In My Back Yard" (NIMBY). The respondent believed that the Hazardous Waste Facility Board should be abolished and that siting decisions should be made by OEPA subject to appeal as on all other matters.

A management consulting firm interviewed several clients concerning the OEPA regulatory procedures. The major complaints were the frequent and poorly publicized changes in guidelines and regulations, a focus on adversarial enforcement rather than problem solving, and the time taken to reach decisions.

A representative of the OEPA was asked to respond to several of the criticisms presented above. In reference to the charges that the regulations are open-ended and that the procedures are time consuming, the representative defended the OEPA's procedures, stating that a series of tests are often needed because the initial one does not provide sufficient information on which to base a decision; at times, initial tests point to problems requiring further investigation. While admitting that this iterative approach can be frustrating for developers, the OEPA representative suggested that the alternative--requiring a "Cadillac" series of tests up front--would be a greater burden. OEPA admitted that the federal regulations it enforces are very broad and "do not lend themselves to a cookbook approach." Instead, the representative stressed the importance of good lines of communications between the developer and the OEPA.

In reference to the comments that the agency's interpretations are not consistent, the representative suggested that this is partly due to differences among projects. The geologic or geographic characteristics of one site, for example, might require a type and degree of testing not required at another site. The representative did acknowledge, however, that the majority of processing takes place at the district level and that there was probably some difference in judgment among districts. He suggested the need for ongoing, in-house training to keep these differences to a minimum.

In reference to the original respondent's opinion that appeal procedures are inadequate, the representative outlined the various procedures in place and suggested that they are "pretty much standard" for regulatory agencies and he was not sure how they could be improved.

### THE PURPOSE AND TECHNIQUES OF STATE REGULATION

States use regulatory agencies to deal with problems that the uniform application of rules cannot deal with. In general, this involves a finding or a presumption that one or more of three conditions have been met:

The complexity of technical issues precludes the simple application of rules--thus, for example, the Ohio Environmental Protection Agency reviews siting proposals for waste disposal facilities to determine that the site will not cause environmental damage (Case D). It is not possible to provide a simple checklist of site characteristics that would establish its suitability as a hazardous waste dump. And the Ohio Historic Preservation Office must determine what features of a building must be maintained in order for a project to qualify for a preservation tax credit (Case C). They must perform the delicate task of assessing what changes are possible to a building while still preserving its historic qualities.

It is necessary to provide a forum for all interested parties to express their feelings about a proposed project. Thus, for example, the Ohio Environmental Protection Agency must hold public hearings on the siting of facilities that make unpleasant neighbors in order to allow all interested parties the opportunity to express their views (Case D). In this role, the regulatory process enables full citizen participation in important decisions.

There are public interests in the issue that are not reflected in market transactions--thus, for example, the Ohio Historic Preservation Office encourages the preservation of historic buildings that might be torn down in the absence of the subsidy because the value that the community-at-large places on preservation may not be reflected in the value of the property to the developer (Case C). Similarly, the value to society of

supporting minority business ventures is not reflected in the usual bidding process on contracts, which is concerned only with finding the cheapest supplier (Cases A and B).

Decision-making by regulatory agencies is bound to give rise to dissatisfaction and complaints. Regulations are, innately, discretionary resolution of conflicts. Regulatory decisions are compromises in which none of the interested parties gain exactly what they want. Environmentalists may want to block some developments while developers may want unrestricted access. Regulators may allow controlled development, pleasing neither side. The process may seem rushed to project opponents and unnecessarily protracted to its proponents.

There is also an inherent tension between regulatory flexibility and consistency, characteristics which are difficult to maintain concurrently. A common complaint among respondents was the open-ended nature of some regulations or the inability of the regulators to precisely define, from the onset, the conditions of compliance and non-compliance. On the other hand, respondents also complained that regulators were too rigid, that they were unwilling to bend or interpret the rules to allow for unique situations. Both of these complaints, independently, appear to address valid concerns. Considered simultaneously, however, the difficult position of the regulator is apparent. If the regulator decides to make a regulatory exception in a given case based on a particular set of circumstances, a third party may protest that unfair preferential treatment has been granted.

Policy-makers must be able to determine when the number and the intensity of complaints has risen above the inevitable threshold and reached a level where some kind of remedial action may be required. If that point

has been reached, they must be able to determine whether remedial action should consist of better informing the public about the regulatory process, dealing with complaints or appeals more effectively, or restructuring the regulatory procedures themselves. That is, they must be able to diagnose the regulatory process.

## **CONCLUSIONS**

As the previous discussion suggests, some problems with business regulation are essentially inherent to the process and cannot be avoided--although, with some managerial sensitivity, adverse perceptions can be mitigated. On the other hand, other regulatory problems result from the way in which regulatory agencies are structured or operated and can be more easily corrected. Structural and operational problems with regulatory agencies are discussed, in turn, in the following two sections.

### **Structural Problems With Regulatory Agencies**

Several factors may exacerbate the basic difficulties of regulatory decision-making. First, regulations are a complex amalgam of federal and state mandates and state administrative procedures. State agencies are often blamed for enforcing laws that have been enacted in Washington and over which they have no control. The Ohio Historic Preservation Office, for example, was criticized for not considering economic development when ruling on tax credits even though criteria is set at the federal level. The best way for agencies to deal with this problem is to ensure that their clients understand, clearly, the source of their authority and the constraints on this discretionary power. One possible strategy would be for Ohio to publish something equivalent to the Federal Register in which all draft regulatory changes could be published for comment and all final changes published for the record.

Second, agencies can do nothing about changes in their regulatory procedures mandated by federal or state legislative action or by federal or state court decisions. But agencies can make it easier for their clients by widely publicizing important changes through mailings and through presentations at trade shows. For example, the Ohio Department of Transportation claims to have tightened eligibility requirements for the Minority Business Enterprise program, but the respondent in Case B was unaware of this.

Third, regulatory agencies may be chronically underfunded. They are the easy victim of legislative attempts to curb state payrolls and spending during periods when budgets are tight. Because agencies rarely prepare detailed budget requests that relate speed of response to staffing--at least in presentations that legislators can understand and trust--legislators may be unaware of the consequences of a 10 percent across-the-board cut in agency staff to those people who are regulated by the agency.

One way to deal with this problem would be to fund the agency on an enterprise budget, financed from a permitting fee. In this way, as the workload increases, so do the revenues, and thus the ability to hire staff. It could also pay for the training or retraining of staff--a need admitted by the OEPA. Those regulated by state agencies often express willingness to pay more for permits if the extra fee leads to faster service. Because most agencies do not set the overall rules that they enforce--most are set in Washington or by the legislature--the greater budgetary freedom would not lead to an increase in regulation.

## **Operational Problems In Regulatory Agencies**

Regulatory agencies rarely maintain sophisticated management information systems that allow them to identify and deal with operational problems. Data, such as the average response time on requests from the public, duration of different phases of the permitting process, number of complaints, appeals, and the disposition of appeals, all indicate, albeit imperfectly, how well the agency is performing its task. So does the clarity and length of forms.

**Non-Responsive.** Some agencies may be, or may appear to be, non-responsive to their clients. The EEO, for example, initially failed to return telephone calls from project staff and was accused of "bitterness" by a respondent.

Agencies should treat callers with the same courtesy and respect that a customer expects when calling a business. While an agency's ability to respond quickly may be hampered by the volume of calls in relation to the number of available staff (see Case A), this does not suspend the rights of the caller. If it is not possible to completely satisfy the caller promptly, it is important that the agency demonstrate a "good faith effort." Receptionists and other "intake" staff should be trained to be "active listeners" who display empathy towards the caller and help to alleviate, rather than heighten, frustration. Agencies should maintain a telephone log and delays in answering public requests should trigger an explanation and/or apology to the inquirer and an investigation by the administrator. Response time targets should be set and maintained by all agencies.

Agencies should also make greater use of publications--written in clear, jargon-free prose. Instructions to clients should be easy to read; the respondent in Case A complained of being unable to indicate he was self-employed. Staff should be trained not only in technical skills required by the agency but also in the art of writing clearly.

**The Wrong Mission.** Staff may feel--and communicate to the public--that their mission is to block any project that does not meet specific (and highly technical) criteria rather than to work with the client to find a way of allowing the project to move forward. For example, the Ohio Environmental Protection Agency put the developer in the position of having to prove that his project is safe, with the OEPA taking a "show me" position. This is analogous to a defense attorney being required to prove that his client is innocent and creates an unnecessarily adversarial relationship. OEPA sometimes suggests a series of tests to facilitate the permitting process, but complains that developers often try to short-cut the process. Perhaps OEPA should consider one respondent's suggestion and create an ombudsman, or "consumer advocate," to help people through the extremely complex permitting maze.

Agency management should train staff to regard the businesses they regulate as their clients. Success should not be measured by the number of projects blocked, but by the number of creative solutions to complex problems that staff are able to devise.

These changes can be thought of as "Theory Z" of business regulation. Businesses would be analogous to labor, the regulatory agencies to management. Because businesses are the most directly impacted by regulations, they will have insights that the regulators would not have. Such insights could be the seeds of alternative, more effective and

efficient regulatory methods. A regulatory environment which encourages such input and participation could be patterned after successful labor/management cooperative efforts and implemented on a trial basis to test its effectiveness.

The agency should also guarantee a response time and, if it appears that the deadline will not be met, should contact the client and other interested parties to notify them of the change. Time is money on most projects and the greater the lead time the developer has to reschedule activities, the less money will be wasted. People being regulated have a right to competent direction in order to encourage good faith efforts to comply. Agencies should prepare a "regulatory bill of rights" for their customers. This would inform the latter what to expect during the regulatory process and would also sensitize agency staff to the needs of the people they regulate.

**The Appearance Of Justice.** Businesses being regulated have a right to a clear statement of what is required of them, statements of the reasons for decisions, and a clear and timely appeals process whose rules and precedent are clearly established. If possible, the appeals process should include people from outside the agency. Even with the best intentions, agency staff may find it difficult to be open and entirely objective with a review involving their own agency.

#### POSTSCRIPT

Based on the comments of many respondents, and also on the relatively poor response rate, it is apparent that many businesses are cynical about the resolve of government to improve regulations. Any efforts to improve relations along the lines discussed above must take this prevalent attitude into account.

## APPENDIX A



3. Have you suggested specific alternatives to current regulations?  
If yes, what happened?

4. Are you directly involved in an issue which can be the subject of  
this research? If yes, explain?

5. We will be contacting some participants by phone to gather more  
information. May we contact you?

1. Yes            2. No

6. We may convene group meetings of selected respondents to further  
discuss these issues. Would you be willing to participate in such  
a meeting if it were held at a convenient time and place?

1. Yes            2. No

7. We are considering holding a regional or statewide conference on the topic of government regulations and their impact on economic development. Do you feel such a conference would be helpful?

1. Yes      2. No      3. Uncertain

+> Would you attend such a conference if it were held at a convenient time and place?

1. Yes      2. No      3. Uncertain

8. Would you be willing and able to share with us membership rosters or mailing lists of associations or organizations who might have an interest in this subject.

1. Yes      2. No

9. Please use this space to make any further comments or to share additional information regarding government regulation and its impact on your business.

-----  
The following information is needed for follow-up purposes only. It will not be used in any report or dissemination of results. Your input is confidential.

Name \_\_\_\_\_  
Company \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone (\_\_\_\_) \_\_\_\_\_

Please return the completed questionnaire in the envelope provided as soon as possible. Thank you again for your cooperation and support.

## APPENDIX B

### RESPONSE RATE ANALYSIS

Questionnaires were mailed to over 2,700 people. The response to the mailings, as well as an analysis of this response, is presented below.

#### Legislative Agents

Total number delivered	117
Responses	13

An initial and follow-up mailing yielded an 11 percent response rate. Of those who responded, approximately 23 percent stated that the survey did not apply to them.

#### Businesses

Total number delivered	2,620
Responses	60

The mailing resulted in a response rate of just over 2 percent. Of those responding, approximately 23 percent stated that they were not appropriate targets for the survey (e.g., retired, never owned a business, church, non-profit organization). Another 10 percent stated that they had no particular problem with any state regulations at the present time.

In an effort to determine the reason for the poor response rate, a random sample of non-respondents was selected for follow-up calls. Of the 113 in the sample, the telephone number of 40 (35%) was not listed in available telephone directories or with information. Of those who were reached, approximately 28 percent stated that the survey did not apply to them.

Based on the above, it is evident that the mailing list used for the business mailing contained a considerable percentage of inappropriate (for our purposes) and out-of-date listings. The percentage of listings in this category was estimated to be between approximately 25 percent (based on the percentage of respondents, through mail and by telephone, who stated that they were inappropriate targets) and approximately 60 percent (includes the 35 percent of listings for which numbers could not be found on the assumption that they are no longer in business).

Flaws in the mailing list do not fully explain the relatively poor response. Even if 60 percent of the listing was comprised of inappropriate and "bad" addresses, the response rate from the "good" addresses would be just under 6 percent. Unfortunately, the follow-up calls were not as helpful as had been hoped in determining the reasons for non-response among "good" respondents. Among those businesses reached by telephone, in the vast number of cases, either the intended respondent was not available or did not recall having received the survey.

The follow-up process tested the hypothesis that the low response rate was due to: (1) a lack of interest in the issue (i.e., business regulation not considered a serious problem), and (2) a lack of confidence among many businesses that anything will be done about the issue. Evidence that these possible explanations have merit can be found among the surveys that were returned. Approximately 10 percent of the business surveys completed initially, and three of the four surveys sent in response to follow-up calls, stated that the respondent had no particular problems with any state regulations. Among some of those who did indicate a problem, it was apparent that they had been frustrated by what they viewed as inaction, or inappropriate action, by regulators. Examples of comments include: "We have

attended meetings of 'we'll look into it' but nothing ever happens" and "I have written many letters to Ohio legislators but probably did not mail them since I felt it was a hopeless endeavor on my part." There were also indications that some respondents were "skeptical about (the researchers') ability to have any impact."

The low response rate may also reflect the fact that much government regulation is not intended to constrain industry but rather to limit competition in industry--by restricting entry. Limits to competition will increase the profits of existing businesses.\* Relatively few regulations--affirmative action and environmental regulation--reflect the interests of groups inside the business community.

---

\*See George Stigler "The Economics of Regulation," **The Bell Journal of Economics**, Volume 2, No. 3, Spring 1971, and James O. Wilson, "The Politics of Regulation," New York, Harper, 1980.