

City Could Regulate Airport Pollution, Study Finds

By Olin Ericksen
Staff Writer

March 6 -- Contrary to its long-held legal position, the City may be able to regulate pollution at its airport in response to surging jet traffic, according to an analysis by the UCLA environmental law clinic.

Presented to several State and City officials last month, the 40-page report confirms the Federal Aviation Administration's (FAA) authority over flights at the non-commercial municipal airport, which has seen jet traffic jump to some 20,000 takeoffs a year.

But if the FAA fails to address community health concerns, Santa Monica could have a novel legal argument to back up potential laws to monitor and protect against pollution, according to the report.

"The main point is that there appears to be a lot of gray area in what the City may be able to do to address environmental impacts from the airport," said Sean Hecht, the report's author and co-director for the UCLA Frank G. Wells Environmental Law Clinic.

"In fact, there are some pretty good arguments in (the report) on how the City could assert that power," said Hecht, who conducted an extensive review of court cases, as well as the controversial history of the airstrip.

Conducted in response to a request by Los Angeles City Council member Bill Rosendahl to assess Santa Monica's legal options, the report was completed in November 2006 and presented to Rosendahl, whose 11th District abuts the airport.

The report, however, didn't garner much attention until last month, when it became a key document shared by Los Angeles and Santa Monica officials, state legislators and representatives from neighborhood groups at a series of meetings on airport issues.

The meetings are nothing new. For more than two decades, the City has battled the FAA, pilots and flight-related businesses in an effort to institute laws to curb jet traffic, which has had an increasing impact on surrounding communities, the report stated.

The longstanding dispute -- which has featured lawsuits, public rebukes, FAA reprimands and legal threats -- has only fanned residents' frustrations that the City is powerless over the FAA, which deems the airport critical to relieving congestion at larger nearby airports, such as LAX.

But the report -- which Hecht said is unbiased -- may give the City more "legal wiggle room" than previously thought in its efforts to regulate jet traffic, which neighboring residents complain is spewing pollutants on their homes.

"Overall, there should be room for the City to take action without running afoul" of Federal regulations, Hecht wrote.



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A ruling upholding a New York law regulating aircraft noise could be used by the City to institute local laws or policies regulating pollution from jet traffic, as long as the measures do not directly attack commerce at the airport or the FAA's overall authority, Hecht said.

"Acknowledging the FAA's strong interest in ensuring safety and predictability, we nonetheless believe there is room for local regulation of non-noise environmental impacts," Hecht wrote.

In the 1998 case against the City of New York, the Second Circuit Federal Courts allowed National Helicopter Corp. of America to regulate noise from the city-owned airport, although it decreased operations at that airport by 47 percent.

A phase-out plan was upheld to eliminate weekend operations and impose weekday and weekend curfews, resulting in the decreased traffic, according to the report.

Hecht argues that the standards set by the New York ruling could be used in a local suit filed in the Ninth Circuit Court by the Santa Monica Airport Association against the City of Santa Monica, which established noise level regulations for planes.

"While the Ninth Circuit has so far applied this exception to Aviation Act preemption only in the context of allowing a city to limit noise by ordinance, there is a strong argument that the same principles should apply in other contexts," Hecht wrote.

Those could include contexts "in which a municipality attempts to impose operational conditions to improve local environmental conditions, despite the generally narrow scope of municipal regulatory power over airport operations," Hecht wrote.

While acknowledging Hecht may have a point, Deputy City Attorney Martin Tachiki said he would need to study how such a law would be implemented before he could assess its legal validity, something not specifically spelled out in the report.

"The difficult thing for me is this is like reading half the story," said Tachiki.

While Tachiki said he welcomed Hecht's findings and the input of anyone who contributes to the overall airport issue, the details are important when dealing with federal regulators and the court.

"When you go... to the FAA, you need to be pretty specific on presenting your point of view," he said.

Tachiki plans to hold further discussions with Hecht, as the City prepares for what will likely be an important Airport Commission meeting scheduled for March 26. Airport runway safety and other issues on the agenda are expected to draw several neighborhood groups.

Resident activists impacted by the jet traffic hailed the report and its findings.

"I thought it was an excellent report and we've been working for something like this for a very long time," said Martin Rubin, president of Concerned Residents Against Airport Pollution, whose neighborhood group is in Rosendahl's adjacent district.

"One thing that I think came out of it is that... basically the FAA can't have it both ways," he said.

If the FAA won't regulate airport pollution -- which several studies suggest is present in the form of ultra-fine particles that blanket residents' homes in the area -- the City may need to take the initiative, Rubin said.

In spite of the report's legal findings, Hecht acknowledged the City may decide to take legal measures only as a last resort, because it could likely erode any recent cooperation between the City and FAA officials.

Doing so could also lead to more legal wrangling over the already highly politicized issue, Hecht cautioned.

"If they do make any laws, they do so at their own risk," Hecht said.

While legal precedents could give the City some "wiggle room," an outright ban, akin to one enacted by the City in the early 1980s, would not be an option, said Hecht.

"The City can't just ban a class of aircraft from the airport as they tried to before," he said.

Also, if the City tries to press hard to curb airport emissions, it may be seen as an intrusion on the FAA's authority, Hecht said.

More likely to pass legal muster would be laws that regulate takeoffs and landings, Hecht suggested.

The unique circumstances surrounding the Santa Monica airport -- which in aerial photographs resembles an aircraft carrier amidst a sea of homes -- also offers no guarantees on how future courts could rule on the issue, he said.

"There is no definitive answer, because this is an issue that has not come up before," he said.

While Hecht acknowledges the report examined the legal options for Santa Monica as ways to address community concerns, he said he began the report with no preconceived notions and would have reported any findings, regardless of their implications.

"If we would have found that the City's hands were indeed tied legally, we would have said so," he said. "We don't think they are tied."

One issue not addressed is what will happen after 2015, when the landmark 1984 agreement between the City and FAA ends, ushering in a host of other legal questions, although Hecht believes the FAA will retain control.

"We were pretty narrow in our focus," he said. "We didn't want to get into that issue because it offers up a whole other can of worms in regards to what...the City can do.

"What is clear is that it's a big issue looming out there that won't go away," he said.