

tower was associated with a disease outbreak, "it's been established that the tower was not receiving recommended biocidal treatment." The problem in Vermont, he guessed, was caused by an "asinine" approach to maintenance. "The public health hazard is minimal," he concludes.

Although cooling towers are not the only possible source of infection, they are certainly among the most important.

Witherell, Burlington's EPA official, argues that it is risky to lean so heavily on a single maintenance procedure—such as the one required last summer in Burlington—to protect the public from a deadly disease. He thinks multiple barriers should be raised between the bacteria and vulnerable people. Last summer, university employees had to check the chlorine level in the Given tower every 2 hours. Witherell checked it

every day. A system that needs this much attention to be kept safe is not safe, he thinks.

Neither the CDC nor the EPA has shown much interest in sponsoring research on the cooling tower problem. The EPA essentially wishes to be assured that the biocides used in the towers will not cause air pollution. And the CDC is not intrigued by environmental questions.—ELIOT MARSHALL

Scientist with Unpopular Data Loses Job

A biologist thought cooling towers would hurt Hudson River fish, but his company didn't want the judge to hear about it

Whistle-blowing—that is, going public with claims of misconduct by one's employer—is coming under increasingly explicit protection in federal laws. But as Morris H. Baslow has discovered, it is still a perilous undertaking.

Baslow is a currently unemployed marine biologist. A little over a year ago he was fired without warning or explanation by his company, Lawler, Matusky and Skelly (LMS) Engineers. At the time, he had been pressuring the company to include data potentially unfavorable to its clients in testimony before the Environmental Protection Agency (EPA). On getting the sack, Baslow filed a suit with the Department of Labor, claiming he was unjustly dismissed. After a year of unemployment and vigorous legal hassles, his suit was finally settled out of court at the end of October.

The scientific issues, relating to the effect of power plant thermal effluents on fish in the Hudson River, have yet to be evaluated. But the case, costly, complicated, and unpleasant, has amply demonstrated that the lot of a whistle-blower is not an enviable one; rather it requires patience, persistence, and no small amount of courage.

Baslow, who has been engaged in marine research for the past 25 years, began his association with LMS Engineers in 1974 when he was hired as senior scientist. He directed biological studies of the Hudson River for clients that included five power plants, most of them owned by Consolidated Edison, located on the river. The utilities had been ordered by EPA to put up cooling towers to reduce the amount of heated water being released into the river. ConEd wanted an exemption, which necessitated showing

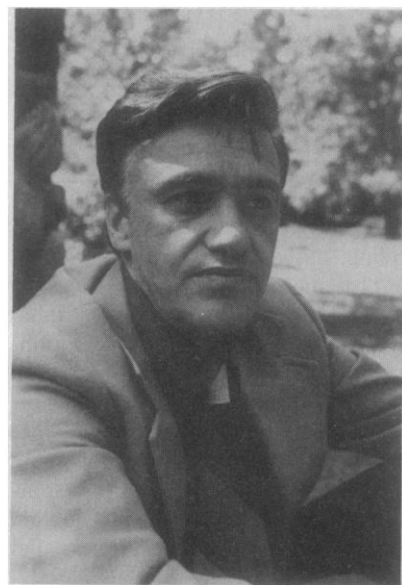
EPA that its thermal effluents were not damaging the river's marine life. LMS Engineers developed data for the EPA hearings which backed up the utilities' contention that power plants did only negligible damage to larvae and fish eggs in the river. Their case, made on the principle of "density dependent growth" was that destruction of eggs and larvae—which have a high mortality rate anyway—was beneficial for the surviving population, enhancing their size and surviveability. Baslow does not quibble with the density-dependent growth principle, but contends that it is not the crucial one in this situation. In his research, he found that larvae and fish growth are dependent on optimal temperatures and that any temperatures above the desired range inhibit growth.

Baslow's position is that for almost 2 years he tried to persuade his employers to include this data in testimony at the EPA hearings. His last plea was a few days before his dismissal when he warned a superior that if she wouldn't intercede he would have to go to EPA directly with the information.

On 11 October 1979, on his way to work, he posted a letter to Administrative Law Judge Thomas B. Yost, who was the hearing case, explaining that he feared his company was "perjuring" itself with regard to the biological data and that "the density-dependent growth testimony . . . is not valid." When he got to work he discovered it was his last day. In the course of cleaning out his office, Baslow gathered 70 documents relating to his temperature data. The following month he mailed off copies of them to Judge Yost and later, on request, to the Federal Energy Regulatory Commission

(FERC) which was holding related hearings on the proposed Storm King pump storage facility in Cornwall, New York.

Meanwhile, Baslow had filed suit with the Department of Labor claiming that he was a "protected" employee under the Federal Water Pollution Control Act and thus had a right to a hearing. The wa-



Morris H. Baslow

ter act is one of six basic environmental statutes that contain an explicit clause prohibiting discrimination against employees who engage in whistle-blowing activities.

According to an EPA official, most of last winter was given over to legal maneuvers instigated by LMS's lawyer Jack S. Kannry as well as lawyers for ConEd and several other utility companies involved in the case. LMS was fighting to regain control over the documents

they maintained Baslow had stolen; they were also delaying Labor Department action on Baslow's dismissal.

Finally, last April, the Labor Department wrote to Baslow's former boss, John Lawler, to say this was indeed a case of discrimination under the law. The letter noted that Baslow's standing in the firm had been on the decline ever since February 1978—when he first started insisting on having his evidence included in testimony—despite the fact that his performance evaluations had been consistently satisfactory. So LMS was told to give Baslow back pay and a salary until he found a new job, pay any legal expenses and give him a good letter of recommendation. LMS appealed this decision and requested a hearing on the case. In the interim, LMS offered Baslow what he calls a "minimal" settlement. On being turned down, the firm initiated a suit against Baslow in the New York State Supreme Court, demanding return of the documents, alleging defamation of the company, its president and one of its scientists, and asking \$5.2 million in damages.

The matter of the documents was

to the \$5.2-million libel proceedings.

Other issues still await resolution. FERC plans to sponsor an independent evaluation of Baslow's fish data, which is required for resolution of the Storm King storage facility case. The commission also wants to establish whether there has been any wrongdoing on the part of LMS Engineers.

Lawler, Matusky and Skelly Engineers is being as tight-lipped as possible about the affair. Lawler declined to comment, leaving that to his lawyer Jack Kannry. Kannry said that the reasons for Baslow's dismissal were not anyone else's business. He characterized the problem as being simply one of "technical disagreement among professionals" and said "other parties are trying to exploit this thing far beyond what it really is." He implied things had been blown out of proportion because of the government's built-in bias against industry.

But the case has amply demonstrated what a nasty and time-consuming imbroglio a little simple whistle-blowing can create.

Baslow, according to government officials acquainted with the case, is the

lawyers, Baslow had to wait under a cloud for a year before gaining relief. Baslow notes that another serious problem for an employee who has been suddenly fired is getting documentation to support his case. If you don't have them, you have no case; if you do you're accused of "stealing" them, he says.

Another element that does not seem to have been foreseen by framers of employee protection measures is the radical inequality of resources between a lone individual and a corporation. Thus, just by delaying maneuvers—not to mention lawsuits whose main function is to harass—the company can bleed the resources of the whistle-blower and force him to accept an unjust settlement.

There is considerable concern within EPA over the effectiveness of employee protection provisions which are now routinely included in environmental protection laws. EPA is acutely aware of its heavy reliance on disinterested testimony in pollution abatement proceedings and needs to be confident that important voices are not being muzzled. Evidence of the agency's concern is the fact that EPA filed a brief on Baslow's behalf in the Labor case, the first time the agency has intervened on behalf of a whistle-blower. EPA lawyer Jonathan Strong says he is pushing hard for getting the agency to shoulder some of the legal costs in whistle-blowing cases that appear to have validity. Strong also suggests that statutes might be amended to prevent companies from filing defamation suits to retaliate against their whistle-blowers.

EPA's Office of Public Awareness is also—somewhat tardily—making efforts to publicize available measures for employees who think their company is engaged in wrongdoing. They have produced a brochure—aimed mainly at blue collar workers (in companies that deal with hazardous wastes, for example)—to assure them they can't be fired for calling attention to company transgressions. An internal order is also being sent out to all EPA employees to inform them of available procedures.

The procedural machinery finally brought about a resolution satisfactory to all parties in the Baslow firing case. But the costs have been great. "We now have a bloody sacrifice," says Richard Azzaro, senior FERC attorney. "He's been through hell." Azzaro says "scientists have been coming to us as a result of this battle. The scientific community should take a good long look at this case and think about how they can better serve the community they are supposed to be serving."—CONSTANCE HOLDEN

Baslow has had to wait a year for resolution of his case. "We now have a bloody sacrifice," says FERC lawyer Azzaro. "He's been through hell."

eventually resolved by a belated FERC ruling, dated 10 September, which cast out the shower of arguments put forth by company lawyers—proprietary interest, Fourth Amendment search violation, attorney-client privilege and work-product immunity—and lifted all restraints on the dissemination of what have become known as the "Baslow documents." FERC also ordered ConEd to respond to interrogatories based on the documents that have been pending since last February.

Another element of the case was resolved on 28 October when the Baslow suit on his dismissal was settled by him and LMS Engineers out of court. Baslow is not allowed to discuss the details, but included in the agreement was a requirement that he return all documents in his possession to the company, and that he write all the government agencies involved saying he did not have specific proof of wrongdoing by the company and apologizing for using the word "perjury" in his initial letter to the Department of Labor. The settlement also puts an end

most serious kind of whistle-blower. He is not a crank or an eccentric, and unlike many who complain against their employers, he did not seize on his dismissal as an opportunity to take vengeance for long-nursed grudges. Whether or not his data are as important as he believes, no one seems to doubt his integrity or dedication as a scientist. Says one EPA official, "Baslow has the most integrity of all the whistle-blowers I've seen."

The Baslow case illuminates possibly serious flaws in the current procedures for dealing with whistle-blowers. As he himself has written, the case makes "very clear . . . the inability of environmental regulations to protect [a person's] right to come forward and present his position without facing personal and financial ruin."

Baslow points out that unless the Department of Labor responds promptly to complaints such as his, the law is virtually useless. The Department of Labor is required by law to hold a hearing within 90 days of such a complaint, but, mainly because of delaying tactics by company