

COVINGTON & BURLING OPINION ON WATER QUALITY STANDARDS—
AUTHORITY OF SECRETARY OF THE INTERIOR

Mr. SULLIVAN. Mr. Coffey, the opinion of Covington & Burling, are they saying that the Secretary has no authority to command and establish standards on interstate streams?

Mr. COFFEY. No, if the State fails to act, he has that authority.

What they are saying is that he has no authority to make a blanket recommendation over and above what the States have legally adopted under their State laws and under the Federal Water Quality Act. To do so without public hearings would, in my opinion, and in theirs, be illegal under the present act.

Any revision in a State standard that has been submitted would require a new set of public hearings to justify any changes. He would have to go back under the revision authority contained in the Federal Water Quality Act.

Mr. SULLIVAN. In other words, what you are saying is that the Secretary is going to tell the State to make these changes without following the Water Pollution Control Act of 1965?

Mr. COFFEY. That is right.

Mr. SULLIVAN. In essence, that is what this opinion means?

Mr. COFFEY. Yes, sir.

NONDEGRADATION POLICY

Mr. SULLIVAN. Can you explain a bit what degradation means?

Mr. COFFEY. What it means in essence is that the water, the quality, the date those State standards are approved by the Secretary shall not be lowered in quality.

There are other parts to his nondegradation policy, such as the reference Governor Love made, such as the economic development of the State which, in effect, he would have in his authority of approving any new or increased source of potential pollution within a State.

Mr. SULLIVAN. Intrastate?

Mr. COFFEY. Yes.

Mr. SULLIVAN. You are talking about the testimony he gave this morning when he cited Alaska as an example?

Mr. COFFEY. Yes.

Mr. SULLIVAN. As a type of State they could set up in intrastate operation.

Mr. COFFEY. But according to his nondegradation policy, the Secretary of Interior would determine whether such a breach of the nondegradation policy, but not a breach of the State's water quality standards would be allowed.

SECONDARY TREATMENT—"COMPARABLE DEGREE OF TREATMENT"
REQUIREMENT

Mr. McEWEN. Mr. Coffey, on page 4, I guess you are quoting a member of your staff wrote to Assistant Secretary DiLuzio, and Mr. Watt said: