

In any suit brought on behalf of the United States under the provisions of section 10(c), the court must receive in evidence the transcript of the proceedings (if any were held) of the conference and Hearing Board convened during the standard-setting process, the recommendations made by the conference and Hearing Board (if any), and the recommendations and standards promulgated by the Secretary. In reviewing the standards, the court must give consideration "to the practicability and to the physical and economic feasibility of complying with such standards," and the court may enter such judgment and issue such order enforcing such judgment as the public interest and the equities of the case may require. Thus, the court is given a broad jurisdictional grant to determine whether the standards, as established, are consistent with section 10(c) (3) and whether compliance with such standards is a reasonable requirement under the circumstances of the case.

III. THE ABSENCE OF STATUTORY AUTHORITY FOR NATIONAL EFFLUENT STANDARDS

A review of the statutory provisions and the legislative history of the Act clearly discloses the Congressional policy of maintaining the primary State responsibility for the promulgation of water quality standards applicable to the receiving stream. This is apparent both from the elimination of any statutory authority for Nationwide effluent control and from the provisions of the Act aimed at preventing adoption of arbitrary National standards.

A. *The Statutory Scheme Envisions Standards Adapted to Local Conditions*

It is clear that arbitrary National standards are not contemplated under the Act. Section 1 states:

"(b) . . . it is hereby declared to be the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution, to support and aid technical research relating to the prevention and control of water pollution, and to provide Federal technical services and financial aid to State and interstate agencies and to municipalities in connection with the prevention and control of water pollution

(c) Nothing in this Act shall be construed as impairing or in any manner affecting any right or jurisdiction of the states with respect to the waters (including boundary waters) of such states."

Furthermore, sections 10(c) (1) itself makes it clear that Congress desired the States, in the first instance, to establish the water quality criteria applicable to interstate waters. And in adopting the criteria, section 10(c) (3) directs State authorities to consider the actual use and value of specific waters, thus indicating the direct relationship between standards and individual stream "uses" and "values."

A reading of the legislative history of the 1965 Act brings sharply into focus the fact that Congress did not contemplate the setting of arbitrary, uniform National standards of water quality. Rather, it clearly rejected such a concept. Indeed, during the three-year period in which hearings were held, Administration spokesmen continually rejected any notion of setting uniform National standards.

Testifying before the Senate Public Works Subcommittee in 1963, Secretary of Health, Education, and Welfare Celebrezze took the position that flexibility in setting standards was essential, both procedurally and substantively. He noted that, as then written, the bill provided for the mandatory setting of water quality standards by the Secretary, but that the Department preferred such authority to be granted on a permissive basis instead. "We believe we can protect health and welfare more effectively and economically on a case-by-case basis than by involving the Government in an attempt to establish standards for all interstate and navigable waters at once." *Hearings on S. 649, S. 737, S. 1118 and S. 1183 Before a Special Subcommittee on Air & Water Pollution of the Senate Committee on Public Works*, 88th Cong., 1st Sess. 460 (1963).

In a similar vein was the Secretary's answer to the following question by Senator Miller:

"Do you foresee or do you think we ought to have flexibility so that varying standards can be provided in regions, for example? Is there some kind of guideline that Congress should establish within which limits an administrative agency should work?"

The Secretary replied:

"I believe you have to have a degree of flexibility because standards will vary. You will need extremely high standards, for example, in shellfish areas.