

"The standards that you would apply, for example, to a small community on top of a mountain on a stream running through would probably be different than the standards that you would apply in areas where 8 million people are jammed together.

"You have to have a degree of flexibility. You have to take all those factors into consideration.

"We have some standards now. We have standards on shellfish, for example.

"But I don't think that you can set standards for the total United States. You have to draw standards in the highly industrialized areas of this country which would be different than standards, as I say, in the lobster beds, shellfish beds, trout streams, or affecting the fishing industry—you would have to have different standards.

"So you have to maintain a degree of flexibility." *Id.* at 470.

The rejection of arbitrary National standards was again made clear during the House consideration of S. 649, as passed by the Senate. During the hearings, Congressman Cramer (R.-Fla.) had occasion to question Assistant Secretary Quigley on this very point:

Congressman CRAMER. "Setting standards before the fact is presently the function of the States and this proposal is to give the Federal government the power to take over present State authority."

Secretary QUIGLEY. "Not at all. S. 649 specifically provides that the Secretary is not supposed to exercise his authority under this section if the States already have adequate standards. So, if the States elected to go the standards route and did a proper job, the Secretary of HEW would never have to do a thing under the section."

Congressman CRAMER. "The Secretary decides whether the States have adequate standards and whether he should exercise that power."

Secretary QUIGLEY. "Right. But this will not be done arbitrarily. He will not issue a fiat and that is it, because again in S. 649 it is specifically provided that if the standards are set and they are not complied with and this leads to an enforcement case, not only do you have all the routine in the enforcement procedure for resolving the question, ultimately, if you have to go to court, S. 649, directs the court, the judge, to second-guess the Secretary as to whether the standards he set are correct."

Congressman CRAMER. "So the Secretary will set the standards nationwide."

Secretary QUIGLEY. "That is not true, Mr. Cramer. That is not the case; that is not provided in S. 649. There is nothing that says he will set the standards nationwide."

Congressman CRAMER. "He will set standards applicable on a national basis."

Secretary QUIGLEY. "No."

Congressman CRAMER. "Either by regional application or otherwise."

Secretary QUIGLEY. "He will set standards, but not nationwide."

Congressman CRAMER. "On a regional basis?"

Secretary QUIGLEY. "On a regional basis, a river basis, or on a section of a river basis." *Hearings on S. 649, H.R. 3166, H.R. 4571 and H.R. 6844 Before the House Committee on Public Works, 80th Cong., 1st and 2d Sess. 271-72 (1963-64).*

The House Committee also heard testimony from an Interior Department representative, Eugene D. Eaton, a Resources Program Specialist in the Office of the Secretary of the Interior, engaged in a general discussion of the standard-setting problem during which he noted:

"Theoretically water quality standards might be set so that there would not be any discharge of any amount whatsoever of the offending substances. Desirable as this might be from the point of view of water purity, it is hardly a realistic approach in our highly urbanized and industrialized society.

"To be practical, in many cases, if may be necessary to formulate the standards in relation to the factors just mentioned—that is, such things as the rate and volume of flow and the chemical and physical characteristics of the receiving waters. In practice this could mean that often offending materials might have to be rigorously withheld during periods of low river flow, and perhaps they would be impounded or otherwise handled until river stages are high enough to provide safe dilution, or this could mean the allocation of discharge of offending material between subsurface and surface streams." *Id.* at 718.

Thus, it may be seen that, even at this early stage in the development of Federal water quality legislation, the Interior Department apparently realized that the only practical approach to water quality standards was one based on the