

have to be rigorously withheld during periods of low river flow, and perhaps they relation of standards to local stream conditions and uses rather than National effluent controls. And in the House Report on S. 649, the Committee notes that the House changes in S. 649 were made to "assure the States, the various water pollution control organizations and private industry that the Federal Government does not desire to have an arbitrary establishment of such standards." H.R. Rep. No. 1885, 80th Cong., 2d Sess. (1964).

During the Senate consideration of S. 4 in 1965, Senator Muskie turned his attention to the question of arbitrary Federal standards:

"I might point out that tyranny exists only where there is no appeal. I would think that if I were the Secretary of HEW, and I were considering implementing the standards section, which would be a new kind of authority, I would look at that section giving the courts power to review that very carefully before I established any arbitrary standards.

"When the Congress says to the Secretary that his standard has to be practicable, and he knows that that will be the test that will be ultimately applied, and he knows there are industries with financial resources to press this in the courts, some of which are represented here today, he knows that he has to meet that test, he cannot be arbitrary, and that he has to be practical." *Hearings on S. 4 Before a Special Subcommittee on Air & Water Pollution of the Senate Committee on Public Works*, 89th Cong., 1st Sess. 85 (1965).

Summing up the effect of the water quality standards provision in S. 4, the Senate Committee notes in its report (*see* S. Rep. No. 10, 89th Cong., 1st Sess. 10 (1965)):

"The authority given the Secretary is not arbitrary. He is constrained from arbitrary action by the public hearing and consultation requirements of the standard section and by the knowledge that, if he promulgates standards, compliance with such standards must ultimately meet the test of 'practicability' in the courts, as provided in section 5(d) of the bill, should violation of such standards trigger an enforcement action. It is clear, also, that the enforcement conference and the hearing board must, in the light of the authority given the court, consider the 'practicability' of the compliance with the standards."

In the same vein was Senator Boggs' comment during the Senate debates:

"[T]he members of the Committee and the staff have worked diligently in preparing language to make it abundantly clear that the States, interstate agencies, and industries will be fully protected from any arbitrary action by a Secretary of Health, Education and Welfare regarding established standards." 111 Cong. Rec. 1506 (1965).

Assistant Secretary Quigley made a final attempt to clarify the Administration's position in regard to uniform National standards and arbitrary action by the Secretary in his testimony before the House Public Works Committee:

"We do not intend to set any national standards. This point was made on the record last year; it was made in the other body. Let me make it again. There is no intent, no purpose in the standard section, as I understand it, to set national standards." *Hearings on H.R. 3988 and S. 4 Before the House Comm. on Public Works*, 89th Cong., 1st Sess. 59 (1965).

During the debate on S. 4, many Congressmen expressed the view that the primary responsibility for establishing water quality standards remained with the States and that uniform National standards arbitrarily set by the Secretary were not contemplated. *See* 111 Cong. Rec. 8635 (1965) (remarks of Congressman Brown, R.-Ohio), 8657 (remarks of Congressman Cramer, R.-Fla.), 8661 (remarks of Congressman Randell, D.-Mo.), 8665 (remarks of Congressman Harsha, R.-Ohio), and 8669 (remarks of Congressman Cleveland, R.-N.H.).

Testimony by FWPCA Commissioner Quigley during the 1967 hearings on water pollution is also of interest, although post-enactment discussion before a Congressional Committee cannot, of course, be considered to be a part of the legislative history. The following colloquy took place between Commissioner Quigley and Congressman Harsha (R.-Ohio):

Congressman HARSHA. "... [N]ow, during the past year or so your office has issued several sets of guidelines and criteria and standards and so forth to be used in developing water quality criteria and in reviewing the States' standards. Is it your intention that the review of State standards be so demanding upon the States in order to have their standards accepted that they must establish the very same criteria that you wish to establish as Federal standards for water pollution control?"