

Commissioner QUIGLEY. "The answer is 'No,' but I think I will let Dr. Hirsch, who is responsible for it, comment in detail."

Dr. HIRSCH. "Generally, the guidelines that we issue have been of a broad nature rather than being very specific."

"The areas, I think, that we have been most specific with in working with the States have been areas of technical, scientific fact rather than policy."

"In other words, if a body of water is desired for a certain type of fishery, we might be specific in working with the State to indicate what level of oxygen or what temperature level would be necessary to support that fishery. That is a matter of scientific information and not a matter of policy decision."

"In the policy areas, however, our guidelines, we think, have been rather general." *Hearings on Water Pollution Before the House Comm. on Public Works*, 90th Cong., 1st Sess. 107-08 (1967).

Later in the colloquy, another interesting exchange took place:

Congressman HARSHA. "I just have one other question, Mr. Quigley, or any member of your staff. It is my impression that Congress defines 'pollution' not as a discharge per se, but rather as a quality which impairs water use."

"Now, am I accurate in that assumption?"

Commissioner QUIGLEY. "I would certainly accept that, without checking the act. That is certainly my working definition of it."

Congressman HARSHA. "All right. Now, does the Federal Water Control Administration believe that the discharge must be eliminated before clean water can be obtained?"

Commissioner QUIGLEY. "As a theoretical question, I do not think the answer to that could ever be yes. I think as a practical matter, in many instances, this is the only way you are going to eliminate the pollution. But I could recognize a situation where because of the flow, high quality of it, and lack of other discharges, that you would not have to." *Id.* at 110-11.

Thus, it may be seen that throughout Congressional consideration of the legislation and as recently as a year ago, the Federal authorities directly concerned with enforcement of the standards provision of the Water Quality Act were speaking in terms of broad general guidelines, as opposed to arbitrary Federal standards. This view was widely and consistently reflected in Congress and in the language of the Act.

B. *The Rejection of Federal Effluent Control Authority*

The original version of S. 649, as introduced, provided for both effluent and stream quality controls.¹ As Secretary of Health, Education and Welfare Celebrezze noted in a letter to Chairman McNamara of the Senate Committee on Public Works:

"This subsection [section 9(i) of the Federal Water Pollution Control Act as amended by section 4 of the Muskie bill] would direct the Secretary to issue regulations setting forth standards of quality and the type, volume or strength of matter permitted to be discharged in interstate or navigable waters." *Hearings on S. 649, S. 737, S. 1118 and S. 1183 Before a Special Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works*, 88th Cong., 1st Sess. 6 (1963).

Similarly, Secretary Udall noted that:

"This new subsection requires the Secretary of Health, Education and Welfare to issue regulations . . . setting forth (1) standards of quality applicable to interstate and navigable waters, and (2) the type, volume, or strength of matter permitted to be discharged directly into interstate or navigable waters or reaching such waters after discharge into a tributary of such waters." *Id.* at 9.

A number of witnesses strongly objected to Federal authority to set effluent standards, as an intrusion into an area traditionally reserved for the States. Sam Thompson, testifying on behalf of the Council of State Governments, noted that:

"[T]he portions of S. 649 which would give the Federal Government power to set binding effluent standards, is the most crucial part of this legislation." *Id.* at 298.

Mr. Thompson further noted that:

"If the Federal Government is to have the power to set effluent standards, there will be nothing which State pollution control agencies can do which the Federal Government cannot also do." *Id.*

¹ See the text of the standards provision at this stage, as quoted in the footnote on page 5, *supra*.