

authorities have had the general objective of mandatory secondary treatment for five years and that such a requirement is being imposed on all States. If this was in fact the case, it is surprising that this view was not expressed to Congress by Administration officials, and that no attempt was made to reinstate authority for such an effluent control in the bill. Such a requirement violates both the letter and the spirit of the Federal Act in at least three particulars.

First, it is clear that the Secretary has attempted to establish a rigid National standard in direct conflict with the express legislative intent and greatly at variance with statements of Administration witnesses during the course of the hearings on the Water Quality Act. If any single theme can be drawn from the legislative history of the Water Quality Act, it is that arbitrary, rigid National standards were not acceptable to Congress.

Secondly, the requirement of secondary treatment, whether viewed as a "kind of treatment" or as a "degree of waste removal" (as Secretary Udall has suggested in his recent testimony), can exist only as a control on the quality of the discharge, rather than the quality of the receiving water. It is thus an effluent standard of the type rejected by Congress at an early stage in the history of the water quality legislation. As such, it is clearly beyond the Secretary's authority under the Act.

Finally, since the Secretary's approval can be conditioned only on State compliance with the requirements of section 10(c) (3), any attempt to impose greater requirements on the States is a usurpation of their primary authority in the field of water pollution control.

IV. THE ABSENCE OF STATUTORY AUTHORITY FOR A NONDEGRADATION STANDARD

Recently, the Secretary has sought to impose an additional uniform requirement as a condition on the approval of State water quality standards. Three Federal Guidelines are relevant—numbers 1 and 5, as well as the aforementioned Guideline 8:

"1. Water quality standards should be designed to 'enhance the quality of water.' If it is impossible to provide for prompt improvement in water quality at the time initial standards are set, the standards should be designed to prevent any increase in pollution. *In no case will standards providing for less than existing water quality be acceptable.*

"5. Water quality criteria should be accompanied by a description of present water quality and uses, together with uses expected in the future and the water quality required to make those uses possible. The water quality standards proposed by a State should provide for:

(a) Potential and future water uses as well as the present intended use and uses;

(b) The upgrading and enhancement of water quality and the use or uses of streams or portions thereof that are presently affected by pollution;

(c) The maintenance and protection of quality and use or uses of water now of a high quality or of a quality suitable for present and potential future uses." *Hearings on Water Pollution Before the House Comm. on Public Works, 90th Cong., 1st Sess. 87 (1967).* (Emphasis added.)

The Interior Department has used these guidelines as the basis for the "nondegradation" standard, which it seeks to superimpose upon all State water quality criteria. On February 8, 1968, Secretary Udall announced that, in the future, every State will be required to adopt a nondegradation provision substantially in accordance with the following language:

"Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at their existing high quality. These and other waters of a State will not be lowered in quality unless and until it has been affirmatively demonstrated to the State water pollution control agency and the Department of the Interior that such change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently possible in, such waters. This will require that any industrial, public or private project or development which would constitute a new source of pollution or an increased source of pollution to high quality waters will be required, as part of the initial project design, to provide the highest and best degree of waste treatment available under existing technology, and, since these are also Federal standards, these waste treatment requirements will be developed cooperatively." Press Release, Office of the Secretary, United States Department of the Interior, Feb. 8, 1968.