

In his 1968 Senate testimony, Secretary Udall indicated that in his opinion imposition of a nondegradation standard comes within the intent of the 1965 Act. And Senator Muskie stated that he and the Secretary had agreed on this principle before the "Guidelines" were put together. *See Hearings Before a Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works, 90th Cong., 2d Sess. (March 27, 1968)* (testimony of Secretary of Interior Udall). But if Secretary Udall and Senator Muskie had agreed upon this interpretation of the Act prior to establishing the guidelines, they failed to take a critical look at the Act itself.

Section 10(c) (3) directs the Secretary, the Hearing Board, or the appropriate State authority to take into consideration the use and value of a given body of water when establishing the water quality standards. Such uses include public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other legitimate uses.

This clear statutory direction is further reinforced by the Act's legislative history. The Senate Committee made clear the direct relationship between standards and uses in 1963 and reaffirmed its position two years later:

"The Committee intends that water quality standards should be applied on the basis of the water quality requirements of present and future uses of the stream or sections of the stream, after due consideration of all the factors and variables involved. S. Rep. No. 556, 88th Cong., 1st Sess. 9 (1963); S. Rep. No. 10, 89th Cong., 1st Sess. 10 (1965).

See also "Additional Views in Support of S. 4," a statement by the Republican membership of the House Public Works Committee:

"Standards of water quality are concededly badly needed, but should be established by the State and local agencies, which are most familiar with all aspects of the matter in a given locality, including the economic impact of establishing and enforcing stringent standards of water quality. Authorizing the Secretary of Health, Education and Welfare to promulgate and enforce such standards to the exclusion of the States would obviously discourage the States and local agencies from developing their own plans and standards for water quality and purity. And it would place in the hands of a single Federal official the power to establish zoning measures over—to control the use of—land within watershed areas in all parts of the United States. Such power over local affairs has never been vested in a Federal official, and we are opposed to doing it now." H.R. Rep. No. 215, 89th Cong., 1st Sess. 10 (1965).

The nondegradation standard is clearly the sort of arbitrary National standard that is inconsistent with the statutory scheme of State adopted stream standards based on stream value and use. This inconsistency is apparent from the language of Secretary Udall's press release of February 8, 1968. He states, "I have concluded that in order to be consistent with the basic policy and objective of the Water Quality Act, a provision in all State standards substantially in accordance with the following is required . . ." What follows is the nondegradation requirement. Additionally, the Secretary notes, "Accordingly, I have decided that no standards will be approved from here on that do not contain a satisfactory antidegradation provision." Plainly the Secretary has issued an inflexible, arbitrary order requiring the superimposition of a uniform National standard over all State water quality criteria. Such a requirement is inconsistent with the Secretary's recent claim before the Senate Committee:

"Through all the standards setting process runs the important consideration of reasonableness. We do not seek clean water for its own sake, but for man's benefit. On balance, our clean water efforts must therefore be reasonable." Statement of Secretary Udall Before the Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works, 90th Cong., 1st Sess. 5 (March 27, 1968).

And clearly, the flat nondegradation requirement goes beyond even Senator Muskie's pre-passage view of the need, where practicable, to maintain the present quality of high quality waters:

"Let me say this, in addition: You see, the present law states that the Secretary should act for the Federal Government whenever there is pollution 'which endangers the health and welfare of any persons.'

"Now with respect to streams now contaminated we are talking ex post facto situations. Under S. 4 our objective would be to improve water quality to the point where the health and welfare of persons are more broadly and effectively served.

"With respect to uncontaminated streams, our objective is to preserve insofar as we can the current quality of those streams *in the light of all use require-*