

ments that can be anticipated legitimately in the public interest." *Hearings on S. 4 Before a Special Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works*, 89th Cong., 1st Sess. 82 (1965). (Emphasis supplied.)

It is apparent that Senator Muskie did not envision a uniform nondegradation requirement unrelated to stream uses based on local needs. Rather, his statement reflects a more practical approach of maintaining present water quality in the light of all legitimate use requirements.

Furthermore, the nondegradation standard would be unenforceable under section 10(c)(5) of the Federal Act. That section provides for the abatement of any discharge which reduces water quality below levels established in accordance with section 10(c). No provision exists for abating any discharge which reduces present water quality unless such discharge also reduces the water quality below the use and value related standard set in accordance with section 10(c)(3).

Of equal significance is the fact that the nondegradation requirement serves to eliminate the primary authority of the States in the field of water pollution control. This too is clearly contrary to the intent of the Federal Act, which directs the States to assume the primary position in regard to standard-setting, pollution control, and pollution abatement:

"[I]t is hereby declared to be the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution . . ." Federal Water Pollution Control Act § 1(b).

"Consistent with the policy declaration of this Act, State and interstate action to abate pollution of interstate or navigable waters shall be encouraged and shall not, except as otherwise provided by or pursuant to court order under subsection (h), be displaced by Federal enforcement action." Federal Water Pollution Control Act § 10(b).

Finally, the Secretary's nondegradation requirement would in effect displace State primacy in establishing water quality standards and in preventing and controlling pollution contrary to the clear command of section 10(c)(1). Permission to lower the quality of "high quality" waters would require a determination of justification by both the State involved and the Secretary. But under the Act the Secretary lacks the authority to require Federal preclearance of treatment facilities or of particular discharges into a stream. Further, the additional requirement that new or increased pollution of "high quality" waters be permitted only if the new installation provides "the highest and best degree of waste treatment available under existing technology" is an attempt to impose effluent standards without statutory basis and to require a degree of treatment that is inconsistent with the enforcement criteria of "practicability" and "physical and economic feasibility." In any event, failure to install a particular type or degree of treatment facility is not a violation of the Act unless such failure also results in a reduction of stream quality below established levels.

V. REVISION OF APPROVED STANDARDS

Although an FWPCA release (March 18, 1968) indicates that 28 States' standards have received "approval," and Secretary Udall has indicated that his Department hopes to "approve" all State standards by June 1968 (*see Hearing 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 Udall)), he has also stated:

"We intend to go back to the States whose standards were approved last summer, based on the new policy and on the experience which we have gained to date, and, where changes are needed in the standards, we will request them.

"We have not yet formally asked the ten States whose standards were approved last summer to adopt the anti-degradation language, except the State of Idaho. I have publicly indicated that this will be expected." Statement of Secretary of Interior Udall Before Subcommittee on Air and Water Pollution of the Senate Comm. on Public Works, 90th Cong., 2d Sess. 9 (March 27, 1968).

In this context, the statutory procedures for revision of approved standards become particularly relevant. Once approved under section 10(c)(1), State water quality standards become the applicable Federal standards under the Federal Act. As such, they may be revised only in accordance with established procedures. In particular, section 6(b) of the Model State Act ("Suggested State